

**MINUTES**

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION  
REVIEW COMMITTEE**

**TWENTY-SECOND MEETING**

**NOVEMBER 17, 18, AND 19, 2001**

**HARVARD LAW SCHOOL  
CAMBRIDGE, MASSACHUSETTS**

## TABLE OF CONTENTS

Background	3
The 22 <sup>nd</sup> Meeting of the Review Committee	3
Review of the Agenda	5
Review/Approval of Kelseyville, CA, Meeting Minutes	6
National NAGPRA Reports	6
NAGPRA Update	6
Status of Notices	6
Status of Grants	7
Status of Staffing	8
Status of Information Management Systems	8
FY2002 Work Plan	9
Culturally Unidentifiable Human Remains	10
Status of Disputes	11
Action List	14
Dispute: Fallon Paiute-Shoshone Tribe and U.S. Department of the Interior, Bureau of Land Management, Nevada State Office	14
Introduction	14
Fallon Paiute-Shoshone Tribe	15
Review Committee Discussion	21
Discussion of Federal Agency Compliance	26
Bureau of Indian Affairs (BIA)	26
Review Committee Discussion	27
Discussion of Reburial on Federal Lands	27
Repatriation Report, University of Nebraska-Lincoln	28
Review Committee Discussion	28
NAGPRA Implementation in the Northeastern U.S.	29
Aroostook Band of Micmac/Wabanaki Tribes of Maine	29
Wampanoag Confederation	30
Review Committee Discussion	30
Contamination of Cultural Items	30
Review Committee Discussion	30
Public Participation	31
Disposition of Culturally Unidentifiable Remains	32
Review Committee Discussion	33
Meeting Protocol	34
Dispute Procedures	34
FACA Final Rule	34
Nomination Process	35
Upcoming Meetings	35
1999/2000 and 2001 Report to Congress	35
Introduction - Robert Stearns	35
Public Comment	35
Closing Comments	39

## **Background**

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C 3001), which was signed into law by President George Bush on November 16, 1990.

NAGPRA authorizes the Committee to monitor and review the implementation of the inventory and identification process and repatriation activities. Its specific responsibilities include the following:

- “1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
- “2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;
- “3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;
- “4. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for disposition of such remains;
- “5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;
- “6. Consulting with the Secretary [of the Interior] in the development of regulations to carry out Public Law 101-601;
- “7. Performing such other related functions as the Secretary [of the Interior] may assign to the Committee;
- “8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and
- “9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year.”

Review committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The review committee reports to the Secretary of the Interior. The Assistant Director, Cultural Resources Stewardship and Partnerships, National Park Service (NPS) or, in the absence of the Assistant Director, a designee will serve as the Designated Federal Official (DFO) required by section 10 of the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), and as provided in the review committee’s charter, to oversee the management of the review committee. Through the Assistant Director, NPS provides administrative and staff support to the review committee on behalf of the Secretary of the Interior.

Additional information about the review committee – including the review committee’s charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA program Website, <http://www.cr.nps.gov/nagpra/> (click on “Review Committee”).

## **The 22<sup>nd</sup> Meeting of the Review Committee**

The 22<sup>nd</sup> meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Mr. Armand Minthorn at 8:30 a.m., Saturday, November 17, 2001, at Pound Hall, Harvard Law School, Cambridge, MA. The following review committee members and National Park Service (NPS) staff were in attendance:

Members of the review committee:

Mr. Armand Minthorn, Chair  
Mr. Garrick Bailey  
Mr. James Bradley  
Mr. Lawrence Hart  
Ms. Vera Metcalf  
Mr. John O'Shea  
Ms. Rosita Worl

National Park Service staff:

Mr. John Robbins, Assistant Director, Cultural Resources Stewardship and Partnerships (CRSP), NPS, Washington, DC, and DFO for the review committee  
Mr. Robert Stearns, Manager, National NAGPRA program, NPS, Washington, DC  
Ms. Carla Mattix, Solicitor's Office, U.S. Department of the Interior (DOI), Washington, DC  
Ms. Mary Downs, Coordinator, National NAGPRA Program, NPS, Washington, DC  
Ms. Karen Mudar, Coordinator, National NAGPRA Program, NPS, Washington, DC  
Ms. Lesa Hagel, Consultant, National NAGPRA Program, NPS, Rapid City, SD

The following persons were in attendance during part or all of the meeting (names and affiliations are shown as provided at the meeting by attendees.):

Ms. Donna Augustine, Aroostook Band of Micmacs, Wabanaki Tribes of Maine  
Ms. Christina Breault, George W. Brown, Jr., Ojibwa Museum, Lac du Flambeau, WI  
Ms. Lisa Bresette, Red Cliff Band of Lake Superior Chippewa, Bayfield, WI  
Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
Ms. Tracy Carrier, American Museum of Natural History, New York, NY  
Ms. Shara Chase, Roger Williams Museum of Natural History, Providence, RI  
Mr. Brian Chestnut, Ziontz, Chestnut Law Firm, Seattle, WA  
Mr. Roger Colten, Peabody Museum of Natural History, New Haven, CA  
Ms. Donna Cossette, Fallon Paiute-Shoshone Tribe, Fallon, NV  
Ms. Barbara Crandell, Native American Alliance of Ohio, Thornville, OH  
Ms. Suzanne Day, Harvard University, Washington, DC  
Ms. Kay DeKuiper, Harvard University, Washington, DC  
Ms. Rochanne Downs, Fallon Paiute-Shoshone Tribe, Fallon, NV  
Ms. Penelope Drooker, New York State Museum, Albany, NY  
Ms. Irene Dundas, Cape Fox Corporation, Ketchikan, AK  
Mr. Alfred Foster, U.S. Army Headquarters, Washington, DC  
Mr. Ashley George, Fallon Paiute-Shoshone Tribe, Fallon, NV  
Ms. Myra Giesen, Bureau of Reclamation, Lawrence, KS  
Mr. Robert Goodby, Department of Anthropology, Franklin Pierce College, Rindge, NH  
Mr. Alan Goodman, Hampshire College, Amherst, MA  
Ms. Martha Graham, American Museum of Natural History, New York, NY  
Mr. Wendell Greek, U.S. Army Reserve Command, Fort McCoy, WI  
Ms. Priscilla Grew, University of Nebraska-Lincoln, Lincoln, NE  
Ms. Elaine Guthrie, American Museum of Natural History, New York, NY  
Mr. John Harkey, Providence, RI  
Ms. Roberta Hayworth, U.S. Army Corps of Engineers, St. Louis, MO  
Mr. Brent Hicks, Confederated Tribes of the Colville Reservation, Nespelem, WA  
Mr. R. Eric Hollinger, National Museum of the American Indian, Smithsonian Institution, Washington, DC  
Mr. Audie Huber, Confederated Tribes of the Umatilla, Pendleton, OR  
Ms. Barbara Isaac, Cambridge, MA  
Ms. Kelly Jackson, Lac du Flambeau Band of Lake Superior Chippewa Indians, Lac du Flambeau, WI  
Mr. Willard Jackson, Tlingit, AK  
Ms. D. Bambi Kraus, National Association of Tribal Historic Preservation Officers, Washington, DC  
Mr. Russell Leighty, American Museum of Natural History, New York, NY  
Ms. Angela Linn, University of Alaska Museum, Fairbanks, AK  
Ms. Diana Loren, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

Ms. Rhonda Lueck, U.S. Army Corps of Engineers, St. Louis, MO  
 Ms. Stephanie Makseyn-Kelley, National Museum of the American Indian, Smithsonian Institution, Suitland, MD  
 Ms. Carol Mandrick, Department of Anthropology, Harvard University, Washington, DC  
 Ms. Desiree Martinez, Cambridge, MA  
 Ms. Carolyn J. McClellan, Bureau of Indian Affairs, Reston, VA  
 Ms. Jean McCoard, Native American Alliance of Ohio, Lucasville, OH  
 Mr. Robert McLaughlin, Department of Anthropology, University of Chicago, Chicago, IL  
 Mr. Bryan Mitchell, Tribal Historic Preservation Program, NPS, Washington, DC  
 Ms. Pilar Montalvo, American Indian Ritual Object Repatriation Foundation, New York, NY  
 Mr. John Moody, White River Junction, VT  
 Ms. Michele Morgan, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
 Mr. Alvin Moyle, Fallon Paiute-Shoshone Tribe, Fallon, NV  
 Ms. Nell Murphy, American Museum of Natural History, New York, NY  
 Ms. Diane Palmer, Cape Fox Corporation, Ketchikan, AK  
 Mr. James Pepper Henry, National Museum of the American Indian, Smithsonian Institution, Suitland, MD  
 Mr. Morgan Perkins, State University of New York, Potsdam, NY  
 Mr. John Peters, Jr., Massachusetts Commission on Indian Affairs, Boston, MA  
 Ms. Ramona Peters, Wampanoag Confederation  
 Mr. William Reed, USDA Forest Service, Boise National Forest, Boise, ID  
 Ms. Donna Roberts-Moody, White River Junction, VT  
 Mr. Ernie Seckinger, U.S. Army Corps of Engineers, Mobile, AL  
 Ms. Esther Shea, Tlingit, Ketchikan, AK  
 Mr. Martin Skrydstrup, Columbia University in the City of New York, New York, NY  
 Mr. Marc Slonim, Ziontz, Chestnut Law Firm, Seattle, WA  
 Mr. Chuck Smythe, NPS, Boston, MA  
 Mr. Terry Snowball, Smithsonian Institution, Suitland, MD  
 Mr. Roderick Sprague, University of Idaho, Moscow, ID  
 Ms. Melissa Wagner, University of Pennsylvania Museum, Philadelphia, PA  
 Ms. Rubie Watson, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
 Ms. Heather Whitemanrunshim, Lodge Grass, MT  
 Mr. James Whitney, University of Alaska Museum, Fairbanks, AK  
 Mr. Frederick York, NPS, Seattle, WA  
 Ms. Melinda Young, Lac de Flambeau Band of Lake Superior Chippewa Indians, Lac du Flambeau, WI  
 Ms. Amanda Zeman, Cornell University, Ithaca, NY

Mr. Minthorn welcomed review committee members and members of the audience and stressed the importance of review committee meetings as a forum for addressing NAGPRA implementation issues. Mr. Minthorn acknowledged and recognized the local Indian tribes. Ms. Donna Roberts-Moody, Abenaki Nation, White River Junction, VT, gave the opening invocation. Review committee members and NPS staff introduced themselves.

Mr. Robbins asked the audience members to register as part of the meeting record. He explained that due to U.S. Mail delays, the National NAGPRA program may not have received written submissions for the meeting, which may be submitted at the meeting. Mr. Robbins thanked the Peabody Museum of Archaeology and Ethnology and Harvard Law School for hosting the meeting.

During the meeting, Ms. Worl, according to Tlingit cultural protocols, introduced Ms. Esther Shea, clan mother of the *Teikweidi*, from Ketchikan, AK.

## **Review of the Agenda**

Mr. Minthorn gave a brief review of the agenda.

## **Review/Approval of Kelseyville, CA, Meeting Minutes**

Ms. Worl asked that the implementation update be described on a quarterly, biannual, or year-to-year basis instead of a cumulative basis. Regarding the review committee's request for an analysis of the grants program, Ms. Worl said that the review committee wanted the analysis to document the increasing need for grant support and to characterize the types of needs, such as the contamination issue. The review committee decided to adopt the Mr./Ms. mode of address instead of Dr., and requested that the minutes consistently use this format.

The review committee members unanimously approved the minutes subject to Ms. Worl's proposed changes. Revised minutes were prepared for the chair's signature later in the meeting.

## **National NAGPRA Reports**

Mr. Robbins reviewed the National NAGPRA reports, which were provided to the review committee at the meeting.

### NAGPRA Update

The NAGPRA update was a statistical overview of issues addressed in further detail in later reports.

### Status of Notices

The notices report was divided into two sections: Notices of Inventory Completion and Notices of Intent to Repatriate, and Notices of Intended Disposition.

The cumulative total of all notices of inventory completion and notices of intent to repatriate progressed as follows:

630	Total logged as of January 1, 2000
731	Total logged as of June 30, 2000 (end of second quarter CY2000)
903	Total logged as of October 31, 2000 (end of third quarter CY2000)
949	Total logged as of January 1, 2001
1,010	Total logged as of April 30, 2001
1,096	Total logged as of November 1, 2001

Of the 1,096 total notices logged, 781 have been published in the Federal Register, at an average publication rate of 98 notices per year since 1995, the deadline for museum inventory submissions. In CY2000, 152 notices were published. Between January 1 and November 7, 2001, 178 notices were published, an average of 18 notices per month. The 178 notices included 139 notices of inventory completion and 39 notices of intent to repatriate. Of the published notices, 99 were considered priority due to formal repatriation claims. Between May 1 and November 1, 2001, 81 notices were published, of which 62 were notices of inventory completion and 19 were notices of intent to repatriate. Approximately half of the 81 published notices were priority notices. Between May 1 and November 1, 2001, 81 notices were logged, of which 40 were received during this period and 41 were found as a result of records management improvement.

As of November 1, 2001, the backlog was 315 unpublished notices, approximately 29 percent of the total 1,096 notices logged. The backlog includes 52 priority notices. Of the priority notices, 16 are on hold at the request of the museum or Federal agency, 4 have been sent to the Federal Register but are not yet published, 1 has been withdrawn, 27 are in process towards Federal Register publication, and 4 have not yet been assigned to staff. To improve notice processing efficiency, National NAGPRA asked museums and Federal agencies to identify notices that are not ready to be published, resulting in a total of 87 on-hold notices identified in the backlog. In addition, nine nonpriority notices have been sent to the Federal Register. Of the remaining 219 unpublished notices, 147 currently are being processed by National NAGPRA staff.

Since 1994, 30 notices of intended disposition have been published in local newspapers-of-record. In CY2001, three pairs of notices of intended disposition have been published.

In response to a question by Mr. O'Shea, Mr. Robbins explained the current Federal Register publication process. Mr. Robbins said that since January 2001, the notice review process includes additional review within the Department of the Interior and NPS. Mr. Robbins explained that at this point it is difficult to predict the time frame for future notice publication and added that delays in the U.S. Mail and intraoffice and interoffice mail could cause further delay.

In response to a question by Mr. Minthorn, Mr. Robbins explained that the periods of forbearance for the six institutions were completed, with each institution's meeting its required inventory deadline. Those institutions included American Museum of Natural History; New York State Museum; Ohio Historical Society; Peabody Museum of Archaeology and Ethnology, Harvard University; Phoebe A. Hearst Museum of Anthropology, University of California, Berkley; and Texas Archeological Research Laboratory, University of Texas, Austin.

In response to a question by Mr. Bradley, Mr. Robbins explained that at the current rate the backlog might be completed in approximately three years, not taking into consideration new notices received in the interim. Mr. Bradley requested information on the average length of time to process notices and on the rate of notices returned due to incomplete or insufficient information.

#### Status of Grants

The grants report consisted of a brief overview, a list of FY2001 grants awards, a NAGPRA grants awards summary, and a NAGPRA grants proposal summary.

In FY2001, the National NAGPRA program awarded 44 grants totaling \$2,438,000. Of the 44 grants, 40 were awarded through the competitive process and 4 were noncompetitive repatriation grants. The National NAGPRA program received 69 competitive grant applications, from 49 Indian tribes, Alaska Native villages, and corporations, and Native Hawaiian organizations, and 17 museums. The 69 applications represent a total request of \$4.1 million. Between the first year of the grants program (FY1994) and FY2001, NPS has received 846 applications (requesting approximately \$58 million) and has awarded 338 grants (approximately \$18 million). Information about FY2002 grants will be available in December 2001 on the NAGPRA Website and will be distributed via the National NAGPRA mailing list.

Ms. Worl expressed concern that grants appropriations are reduced to partially fund the administration of the National NAGPRA program, and asked whether the \$400,000 base funding increase reported in FY2001 was available for FY2002. Mr. Robbins explained that funding for National NAGPRA activities comes from four sources: a line-item appropriation for NAGPRA grants, a line-item appropriation for the administration of the NAGPRA grants program, a reprogramming of NAGPRA grants funds for the operation of the National NAGPRA program, and an allocation for NAGPRA activities from base funding for cultural resources. Funding available for NAGPRA program administration and for NAGPRA grants was level for many years and, as administrative costs rose, differences between available funds and actual costs were supplemented from grants funds. In FY2001, the reprogrammed amount was \$29,000 – unusually low for a number of reasons, including low staff numbers. In FY2002, in spite of a \$400,000 base increase, reprogramming from the grants funds continues to be necessary to fully fund the operation of the National NAGPRA program.

Ms. Worl asked if additional funding could be requested to reduce the reprogrammed amount. Mr. Robbins explained that now that the cost of the National NAGPRA program has been determined, it would be reasonable to find additional funding for NAGPRA activities. Ms. Worl reiterated her concern about the use of grants funds for operational expenses due to the present inadequacy of grants monies. She suggested including this topic in the report to Congress.

Mr. Bailey expressed concern over Indian tribes that have not received any grant money in the history of NAGPRA activities and suggested an analysis of grants distribution – geographically, by Indian tribal populations, and by needs of different communities. He explained that the competitive process is problematic given the different resources and abilities of Indian tribes to compete for grants. Mr. Bailey suggested that the National NAGPRA program could work with Indian tribes to develop fundable grant applications and identify resources to help define their needs and concerns. Mr. Robbins explained that one of the new staff positions of the National NAGPRA program is the education and development position, which will include developing the capacity of the NAGPRA community to compete for NAGPRA grants. Mr. Bradley stated that although the funding sources for the grants

program and NAGPRA administration may seem complicated, the National NAGPRA program has made substantial progress in establishing a fiscal and staffing foundation over the last two years.

Ms. Worl suggested including the total number of grant applicants and the total amount requested in the review committee's report to Congress in order to highlight unmet grants needs. Mr. Minthorn added that the reports have always indicated the need for increased funds, although not the specific information suggested by Ms. Worl. Mr. Bailey expressed concern that only 40 percent of Indian tribes requesting grants have ever received grants. He suggested that this statistic emphasizes the need for Indian tribes' being able to identify their concerns and the critical need for additional grants funding. Mr. Minthorn raised the idea of prioritizing the grants awards. Mr. O'Shea reminded review committee members of discussions at the Kelseyville meeting to offer priority for first-time proposals. Mr. Robbins suggested that the pre-application assistance currently offered by the National NAGPRA staff could be improved. In addition, the education and development staff could work to increase the Native American community's capacity to apply for grants. Ms. Worl suggested adding specific funding recommendations in the report to Congress for specific areas of need such as contamination and future care of objects. She suggested that National NAGPRA staff draft the appropriate language for the report to Congress.

#### Staffing

In FY2001 appropriations, the National NAGPRA program had a \$400,000 base funding increase for operations, including staffing. Work on hiring permanent NPS employees to staff the National NAGPRA program began in fall 2000. After delays due to Federal hiring restrictions in January and February 2001, four types of new staff positions were advertised in late March 2001, and applications for all positions were due in early May 2001. A recruiting plan was developed with a goal of reaching diverse candidates. Towards implementing the plan, paper copies of the job announcements were distributed to a mailing list of more than 1,500 entries that included all NAGPRA contacts and NAGPRA grant applicants and grantees. The positions also were advertised on the Web, at meetings, and via electronic distribution, including electronic distribution to NAGPRA review committee members. More than 200 applications were received for the four types of new staff positions. By mid-October 2001, six National NAGPRA positions were filled through the competitive process. The program manager and secretary positions were filled through reassignment within NPS. All staff will have reported for duty by December 2, 2001.

The National NAGPRA program is staffed as follows:

Manager	Robert Stearns, Ph.D., Education–Anthropology and Education, Stanford University
Advisory Committees and Notices	Martha Graham, Ph.D., Anthropology, University of New Mexico
Education and Development	Paula Molloy, Ph.D., Archeology, Harvard University
Databases and Notices	Mary Downs, Ph.D., Archeology, Indiana University Cynthia Murdock, B.A., English and Education, Hillsdale College
Regulations and Notices	Timothy McKeown, Ph.D., Applied Cultural Anthropology, Northwestern University Karen Mudar, Ph.D., Anthropology, University of Michigan
Secretary	Robin Coates

Mr. Robbins also reviewed organizational charts for the U.S. Department of the Interior and NPS to show the National NAGPRA program in departmental and NPS context.

#### Status of Information Management Systems

Between May and November 2001, the NAGPRA data management system was improved and refined. By December 2000, most of the data that had previously been recorded in a DOS-based system and in text lists had been transferred to an Access database. The new, user-friendly Access database allows for systematic entry, retrieval, and tracking of data, and provides a comprehensive and accurate record of files and information related to NAGPRA. Between May and November 2001, the system was refined to include additional data fields, and a number of search capabilities were added. During this period, the data continued to be controlled, reviewed, and verified towards improving records accuracy.

The National NAGPRA Website (<http://www.cr.nps.gov/nagpra>) provides information to the public on grants, text of the Act and regulations, guidance, published notices, documents relating to the review committee, and contact information for National NAGPRA program staff. Regular updates to the Website reflect publication of notices of



inventory completion and notices of intent to repatriate in the Federal Register. Two lists, Inventories Submitted by Museums and Agencies and Summaries Submitted by Museums and Agencies, were removed in May 2001 because the information was no longer accurate or valid and created confusion for users. Lists that accurately reflect the administrative status of inventories and summaries will be placed on the Website in the future.

Also accessible through the National NAGPRA Website is NACD, the Native American Consultation Database (<http://www.cr.nps.gov/nagpra/NACD/INDEX.HTM>). Users can search various fields in this database, including Indian tribes, contact names, and reservations, to yield individualized reports. In December 2000, the database was updated to reflect current information available from the Bureau of Indian Affairs on the status and names of Indian tribes, as well as from contact information maintained by the National NAGPRA program. Between May and November 2001, records for tribal names and contact information continued to be updated internally in the database. An update of these same records for public access via the Website is expected in December 2001. Mr. Robbins provided a chart detailing the main modules of the Access database system, including some sections still in development.

Mr. O'Shea asked about the future Web accessibility of the database. Ms. Downs explained that the National NAGPRA program will consider how the database can be made available via the Internet. Mr. O'Shea emphasized the importance of public access to information about culturally unidentifiable human remains. He anticipated that this access would be important during discussions of the procedures regarding the disposition of these human remains, based on the review committee's recommendations. In response to Mr. Robbins' statement that Web access to inventory data was a new topic for the National NAGPRA program, Mr. O'Shea explained that the regulations required inventories to be submitted in an electronic format and clearly anticipated electronic access.

#### FY2002 Work Plan

The FY2002 work plan of the National NAGPRA program has six areas of emphasis: notices, regulations, NAGPRA review committee coordination, grants, public information dissemination, and education and technical assistance.

*Notices.* The core duties of five of the National NAGPRA staff include assistance to museums and Federal agencies in preparing notices of inventory completion and notices of intent to repatriate for publication in the Federal Register. The program also monitors the publication of notices of intended disposition.

*Regulations.* The following five sections await promulgation.

- 43 CFR 10.7, Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony. Portions of this draft have been initiated. The draft rule needs to be finalized for examination by the review committee and publication in the Federal Register.
- 43 CFR 10.11, Disposition of culturally unidentifiable human remains. Recommendations of the review committee were published in the Federal Register on June 8, 2000. A proposed rule needs to be drafted for further consideration by the review committee and publication in the Federal Register.
- 43 CFR 10.12, Civil penalties. There is an interim regulation on civil penalties. A final rule currently is in process in NPS and in the department towards review and publication.
- 43 CFR 10.13, Future applicability. A draft has been completed and is under review towards publication.
- 43 CFR 10.15 (b), Failure to claim where no repatriation or disposition has occurred. A proposed rule needs to be drafted for consideration by the review committee and publication in the Federal Register.

Also, existing regulations need to be reviewed for technical amendments that reflect the current administration of NAGPRA responsibilities.

Mr. O'Shea asked whether review committee members have seen the drafted future applicability regulations. Ms. Mattix explained that a previous review committee reviewed those regulations and the regulations are now in the final stages of departmental review before being published as a proposed rule. Once published as a proposed rule, the regulations will be available for public comment and then a final rule will follow. Any further review by the review committee could result in further delay of the process; however, once the regulations are out for public comment, review committee members could review them individually or in the context of a meeting if a meeting falls within the public comment period. Mr. Robbins noted that, given the time required to develop regulations, review committee membership might change during regulation development. Mr. O'Shea pointed out that no review committee member has seen the draft future applicability regulations, making it difficult to claim that the current

review committee members had any role in this regulation. He explained that over the years he has requested information on this regulation many times, which he has not received. Mr. Bradley stated that, within the necessary constraints of the process, review committee members would like to see the draft regulations as soon as possible. He asked for an update at the next meeting of how the staff will be allocated to deal with regulations and other assignments. Mr. Robbins explained that no work has been done on regulations since he began with the National NAGPRA program nearly two years ago, and now two of the National NAGPRA staff positions will deal with regulations.

Mr. Minthorn asked Mr. Robbins to provide a timeframe for completing departmental review of the civil penalties regulations. Mr. Hart asked that the review committee be allowed to see the draft of the regulations for disposition of culturally unidentifiable human remains and whether there would be a public comment period. Mr. Robbins confirmed that review committee members would see the draft and explained that there is a public comment period following publication of the proposed regulation in the Federal Register. Mr. O'Shea reminded review committee members of their request to see the original draft of those regulations at the time that they circulate in the department.

*NAGPRA Review Committee.* Two review committee meetings will be held in FY2002. The first meeting will be held in Cambridge, MA, from November 17-19, 2001. The second meeting is tentatively scheduled to be held in Tulsa, OK, from May 31 through June 2, 2002. A newly hired National NAGPRA staff member is assigned to provide the review committee with administrative support in addition to processing notices.

*Grants.* All available FY2002 grant funds will be awarded. A newly hired National NAGPRA staff member is assigned to oversee programmatic and public outreach components of the National NAGPRA grants program.

*Information Dissemination.* National NAGPRA information dissemination will be enhanced through implementing a user-friendly Website, accessible databases via the Internet, and NAGPRA training and technical assistance to inform a variety of interested parties. Two newly hired staff members will develop the usability features to be incorporated in NAGPRA's online databases. A third National NAGPRA staff member's duties include developing information materials for the general public, Indian tribes, museums, Federal agencies, and other interested parties.

*Education and Technical Assistance.* National NAGPRA staff members are responsible for providing technical assistance to Indian tribes, museums, and Federal agencies. Additionally, one staff person, as education and development program coordinator, will provide Indian tribes, museum personnel, and Federal agency staff with educational opportunities and training courses on topics related to implementing NAGPRA.

*Budget.* The National NAGPRA program operates with four accounts: the general operation of the program, grants, grants administration, and funds reprogrammed from the grants appropriation for program operation. Mr. Minthorn asked if the \$400,000 base funding increase reported for FY2001 would occur in FY2002. Mr. Robbins stated that the \$400,000 was included in the funding detailed in the budget reports. Mr. Robbins explained that although funds must be reprogrammed from the grants appropriation to finance overall program operations, as has occurred in prior years, the amount for FY2002 is less than most recent years prior to FY2001. The \$29,000 reprogrammed in FY2001 was lower than usual due to the low number of staff.

#### Culturally Unidentifiable Human Remains

The authority for the National NAGPRA program's work on culturally unidentifiable human remains is cited in 43 CFR 10.10, Repatriation, (g) Culturally unidentifiable human remains: "If the cultural affiliation of human remains cannot be established pursuant to these regulations, the human remains must be considered culturally unidentifiable. Museum and Federal agency officials must report the inventory information regarding such human remains in their holdings to the Departmental Consulting Archeologist who will transmit this information to the review committee. The review committee is responsible for compiling an inventory of culturally unidentifiable human remains in the possession or control of each museum and Federal agency and for recommending to the Secretary specific actions for disposition of such human remains."

Between May and November 2001, culturally unidentifiable inventory data from five institutions were added to the National NAGPRA database. This represents a minimum number of 5,573 individuals (an MNI of 5,573) and 12,906 associated funerary objects (AFO) added to the database. The database now contains approximately 40 percent of the total universe of culturally unidentifiable human remains and associated funerary objects, totaling an

MNI of 35,651 and 253,620 AFOs from 176 institutions. The culturally unidentifiable human remains report included a list of inventories catalogued by institution and a summary of repatriation requests to the review committee for culturally unidentifiable human remains.

In response to questions by the review committee, Mr. Robbins said that the Access database is a work in progress. The information presented in the report showed inventories entered into the database. Institutions and Federal agencies not listed on the report may have submitted inventories. Mr. Robbins expects that increased staffing will accelerate completion of the culturally unidentifiable database. The majority of the culturally unidentifiable data entry has been completed by Ms. Hagel on a consulting basis.

Mr. Minthorn and other review committee members expressed concern at the lack of Federal agency compliance with NAGPRA. In response to a question by Mr. Bailey, Mr. Robbins stated that the intention of the database is to list information for culturally unidentifiable human remains and associated funerary objects in the control of a specific institution or Federal agency, although occasionally institutions and Federal agencies do submit mixed information. Mr. Hart pointed out that some of the listed human remains have actually been repatriated. Mr. Robbins explained that data currently in the database are from the inventories and eventually the database would need to be compared with review committee actions and subsequent repatriations of culturally unidentifiable human remains. Mr. Bradley expressed appreciation for the organized record of culturally unidentifiable human remains information. Mr. Hart asked for consistency in reporting and cited the use of "MNI" in some instances and "HR" (human remains) in others.

#### Status of Disputes

At the review committee's request, the National NAGPRA program has refined the report on the status of disputes initially presented at the Kelseyville meeting. The report contains information on five finished disputes, one dispute under consideration which will be heard at the Cambridge meeting, and eight pending disputes. The review committee has three possible disputes that could be reclassified to disputes under consideration, PEN009, PEN010 and PEN015.

- **FIN001 - Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, and Hui Malama I Na Kupuna O Hawai'i Nei:** Review committee findings published in the Federal Register (April 15, 1993, vol. 58, no. 71, pp. 19688-19689).
- **FIN002 - City of Providence, RI, and Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei:** Review committee findings published in the Federal Register (May 1, 1997, vol. 62, no. 84, pp. 23794-23795).
- **FIN003 - Hopi Tribe and U.S. Department of the Interior, NPS, Chaco Culture National Historical Park:** Review committee findings published in the Federal Register (February 10, 2000, vol. 65, no. 28, pp. 6621-6622).
- **FIN004 - U. S. Department of Defense, U.S. Marine Corps, and Ka 'Ohana Nui o Na Iwi Kupuna o Mokapu, Nahoa Olelo o Kamahameha, Temple of Lono, and Eric Poohina (individual claimant):** The U.S. Marine Corps requested the review committee's assistance concerning multiple claims for human remains and associated funerary objects from Kaneohe Naval Air Station, Oahu, HI. The 15 claimants were unable to make a unified claim within 30 days of publication of notice. The review committee declined to consider the cultural affiliation claims and recommended that the U.S. Marine Corps retain possession of the human remains and associated funerary objects until the claimants agree upon the proper recipient(s). (For additional information regarding the dispute, refer to the minutes of the eighth meeting of the review committee, November 17-19, 1994. See section entitled *Dispute Regarding Human Remains from Mokapu, Hawaii.*)
- **FIN005 - Field Museum and Oneida Nation of New York and Oneida Tribe of Wisconsin:** The Field Museum requested the review committee's assistance concerning competing claims from the Oneida Nation of New York and Oneida Tribe of Wisconsin for an object of cultural patrimony. The review committee decided that a formal finding regarding the dispute was not necessary, and recommended that the tribes reach agreement on arrangements for custody of the wampum belt. (For additional information regarding the dispute, refer to the minutes of the 12<sup>th</sup> meeting of the review committee, November 1-3, 1996. See section entitled *Dispute Over an Oneida Wampum Belt.*)
- **FIN007 - Pechanga Band of Luiseno Mission Indians and U.S. Department of Defense, U.S. Army Corps of Engineers:** California Indian Legal Services sent a letter dated November 24, 1997, on behalf of the Pechanga Band of Luiseno Mission Indians, to the review committee requesting the review committee's assistance in a dispute regarding the disposition of human remains and cultural items excavated by U.S. Army Corps of Engineers from a site near Lake Elsinore, CA. On November 7, 2001, legal representation for the Pechanga Band of Luiseno Mission Indians informed the National NAGPRA program by telephone that the band and U.S. Army Corps of Engineers had reached an

agreement over the disposition of human remains and cultural items. The National NAGPRA program will confirm the resolution of this matter in writing to the band.

- **CON006 - Fallon Paiute-Shoshone Tribe and U.S. Department of the Interior, Bureau of Land Management, Nevada State Office:** A dispute between the Fallon Paiute-Shoshone Tribe and the Bureau of Land Management concerning the disposition of human remains will be considered at the 22<sup>nd</sup> review committee meeting, November 17-19, 2001.
- **PEN008 - Hopi Tribe and U.S. Department of the Interior, NPS, Mesa Verde National Park:** The Hopi Tribe sent a letter dated September 24, 1999, to the review committee requesting the review committee's assistance in a dispute regarding the cultural affiliation of human remains and associated funerary objects in the possession of NPS, Mesa Verde National Park. The notice of inventory completion for the cultural items that are the subject of this proposed dispute has been published in the Federal Register. No further review committee action currently is suggested until the completion of the National Park Service Advisory Board's review of NPS determinations of cultural affiliation. On behalf of the review committee chair, the DFO sent a letter to the tribe regarding the status of this dispute on March 9, 2001. Mr. Robbins explained that the subcommittee of the advisory board met in October 2001 in Santa Fe, NM, to prepare the final version of its report. The NPS Office of Policy, which provides administrative support to the National Park System Advisory Board, is in the process of arranging a meeting of the advisory board for the purpose of presenting this report.
- **PEN009 - Ho-Chunk Nation and Field Museum:** The Ho-Chunk Nation sent a letter dated October 29, 1999, to the review committee requesting the review committee's assistance in a dispute regarding the disposition of a cultural item in the possession of the Field Museum. No Federal Register notice for this proposed dispute has been published because the Field Museum asserts right of possession of this cultural object. On behalf of the review committee chair, the DFO sent a letter dated December 13, 1999, to the Field Museum requesting additional information. The Field Museum responded in a letter dated April 7, 2000, asserting that an object of cultural patrimony can be alienated despite group ownership if the group authorizes the transfer. The Field Museum contends that Ho-Chunk Nation has failed to demonstrate that the museum does not have right of possession since the Ho-Chunk Nation has not demonstrated that the Winnebago Tribe of Nebraska objected to alienation of the object of cultural patrimony. The National NAGPRA program recommends, pending submission of further documentation, scheduling this dispute for consideration at a review committee meeting. Ms. Worl requested additional information on evidence that the Ho-Chunk Nation authorized the transfer.
- **PEN010 - American Indian Intertribal Association (AIIA) and University of Toledo:** Toledo Legal Aid Society sent a letter dated April 4, 2000, to the review committee on behalf of the American Indian Intertribal Association requesting the review committee's assistance in a dispute regarding cultural affiliation of human remains and cultural items in the possession of the University of Toledo. No Federal Register notice has been published for the cultural items because the cultural items have been determined by the University of Toledo to be culturally unidentifiable. AIIA is a membership nonprofit organization of tribes located throughout the United States. The DFO requested clarification from Advisor Carla Mattix regarding who may be an affected party in a proposed dispute. Ms. Mattix responded that there is no definitive legal requirement identifying who constitutes an affected party for the purposes of NAGPRA and the review committee may determine whether a person, tribe, institution, et cetera, is an affected party regarding disputes. AIIA has provided information to the National NAGPRA program detailing inconsistencies in cultural affiliation in the inventory submitted to NPS by the University of Toledo when compared to recent archeological publications. A telephone conversation with AIIA legal counsel on November 5, 2001, indicated that the association has repeatedly tried to initiate consultation with the University of Toledo but that the university has not responded. Copies of the letters to the University of Toledo have been requested by the National NAGPRA program. The National NAGPRA program recommends that – 1) the review committee decide whether AIIA is an affected party, and 2) if AIIA is considered an affected party then this dispute should be scheduled for consideration at a review committee meeting. Mr. Minthorn indicated that the university's refusal to initiate the consultation process was a problem, regardless of AIIA's status as an affected party. Mr. O'Shea suggested that, in identifying who could be an affected party for a dispute, the principals should have standing under the law, but that other interested parties should not be precluded from participating. Mr. Bailey agreed and suggested that organizations could work with federally recognized Indian tribes to facilitate repatriation. Mr. Robbins reminded the review committee that there are consortia groups that are authorized to represent federally recognized tribes for purposes of repatriation. Mr. Bradley stated that in addition to not knowing whether federally recognized Indian tribes are represented by AIIA in this case, the review committee does not have any information regarding the nature of the culturally unidentifiable human remains at issue or the basis for the university's determination of culturally unidentifiable. Mr. Robbins explained that he does not have information on whether AIIA is authorized to represent federally recognized Indian tribes. Regarding the culturally unidentifiable inventory, the information is divided into three categories: 1) human remains and associated funerary objects in the

control of the University of Toledo (an MNI of 74 and 4,000 AFO), 2) human remains and associated funerary objects on loan (an MNI of 243 and 3,000 AFO), and 3) human remains and associated funerary objects for which there is a question of control (an MNI of 6). The culturally unidentifiable collection is from Ohio (which has no federally recognized Indian tribes) and Michigan (which has federally recognized Indian tribes). Ms. Worl suggested developing a standard that clarifies when a person or organization is authorized to act on behalf of Indian tribes.

- **PEN011 - Narragansett Indian Tribe and Peabody Museum of Archaeology and Ethnology:** The Narragansett Indian Tribe sent a letter dated September 14, 2000, to the review committee requesting assistance in a dispute regarding the cultural affiliation of human remains and associated funerary objects in the possession of the Peabody Museum. The notice of inventory completion for the cultural items has been published in the Federal Register (August 15, 2000, vol. 65, no. 158, pp. 49833-39835). The museum sent a letter to the DFO requesting comment on the preeminence of the evidence as a basis for this particular claim. The DFO responded to this inquiry by letter October 13, 2000. The National NAGPRA program responded to the museum that there is no single preeminence of evidence such as geography, but that the totality of evidence must be considered in cultural affiliation. The National NAGPRA program recommends that the review committee chair and the DFO consult further on this matter towards determining whether the review committee should consider this dispute. Mr. Bradley requested a copy of the October 31 letter, which Mr. Robbins stated he had at the meeting.
- **PEN012 - Piro-Manso-Tewa and U.S. Department of the Interior, NPS, Salinas Pueblo Missions National Monument:** The Piro-Manso-Tewa sent a letter dated November 5, 2000, to the review committee regarding a dispute with Salinas Pueblo Missions National Monument because the superintendent had not reburied repatriated human remains from the park in the same location from which the remains were excavated. The National NAGPRA program recommends that this matter not be considered a dispute because reburial location is outside of NAGPRA and proposes sending a letter of explanation to the Piro-Manso-Tewa. Mr. Minthorn asked the reason for the reburial in a different location. Mr. O'Shea stated that it would be critical to know whether reburial location and details were part of the negotiated disposition. If it were part of the negotiated disposition, then it falls under the review committee's purview. Ms. Worl stated her understanding that the review committee does have a responsibility for the disposition of remains or the future care of human remains. Mr. Robbins added that the Piro-Manso-Tewa is not a federally recognized Indian tribe and therefore may not be an affected party under the dispute process. Mr. Robbins agreed to gather further information on the matter.
- **PEN013 - Sand Creek Massacre Descendant's Trust and Cheyenne Tribal Governments:** The U.S. Department of Interior, Bureau of Indian Affairs, Southern Plains Regional Office sent a letter and attachments to the National NAGPRA program dated December 1, 2000, regarding a request to investigate the claims of the Sand Creek Massacre Descendant's Trust to all human remains, artifacts, sacred objects, and objects of cultural patrimony originating from the 1864 Sand Creek Massacre in the possession or control of any private, State, or Federal agencies and museums. Documentation attached to the letter, which the National NAGPRA program did not receive, discussed a potential dispute between the Sand Creek Descendant's Trust and the Cheyenne Tribal governments regarding who has the right to claim the remains for repatriation. The DFO sent a letter dated January 22, 2001, to BIA requesting the attachments to the December 1, 2000, letter. To date, BIA has not responded to the DFO's letter. The National NAGPRA program recommends that this matter not be considered a dispute until further information is available. Mr. Hart expressed concern that the Sand Creek Descendant's Trust does not have standing as an affected party for disputes. Tribal governments would have standing for disputes; in this case the Northern Cheyenne Tribal Government and the Cheyenne-Arapaho Tribes of Oklahoma would have standing regarding the cultural items from the Sand Creek Massacre. Mr. Bailey asked about the standing of direct lineal descendants. Ms. Mattix explained that the regulations state exactly how to show lineal descendancy. Mr. Hart stated that in this case there is no record of the identity of the victims, just that they are Cheyenne. Mr. Bailey suggested that the review committee might want to have a formal clarification on when the rights of lineal descendants are recognized as opposed to the rights of tribal entities. Mr. Hart explained that if this case were heard as a dispute before the review committee he would recuse himself from the discussions. Ms. McClellan provided the National NAGPRA program with a copy of the missing attachment to the December 1, 2000, letter at the Cambridge meeting.
- **PEN014 - Hopi Tribe and U.S. Department of the Interior, NPS, Aztec Ruins National Monument:** The Hopi Tribe sent a letter dated January 8, 2001, to the review committee requesting the review committee's assistance in a dispute regarding the cultural affiliation of human remains and associated funerary objects in the possession of Aztec Ruins National Monument. The notice of inventory completion for these cultural items has been published in the Federal Register (October 2, 1998, vol. 63, no. 191, pp. 53098-53100). No further review committee action is suggested pending completion of the National Park System Advisory Board's review of NPS determinations of cultural affiliation. On behalf of the review committee chair, the DFO sent a letter on March 9, 2001, to the Hopi Tribe regarding the status of this dispute. In response to a question by Mr. O'Shea, Mr. Robbins stated that Aztec Ruins

National Monument was not taking any action in this issue pending the review.

- **PEN015 - Western Apache NAGPRA Working Group and Denver Art Museum:** Western Apache NAGPRA Working Group sent a letter dated January 23, 2001, to the review committee requesting the review committee's assistance in a dispute regarding a claim for cultural items in the possession of the Denver Art Museum. No Federal Register notice for this proposed dispute has been published because the Denver Art Museum does not consider these items to be either objects of cultural patrimony or sacred objects as defined by NAGPRA. Both parties have provided documentation stating their positions. Neither has altered their position, although communication has continued between the Western Apache NAGPRA Working Group and the Denver Art Museum. The National NAGPRA program recommends that this dispute be scheduled for consideration at a review committee meeting. Mr. Robbins stated that he would confirm whether the Western Apache NAGPRA Working Group is authorized to represent federally recognized Indian tribes for the purposes of repatriation. Mr. Minthorn asked for details on which groups the Denver Art Museum consulted in making its determination.

Ms. Worl asked about the civil penalty process for the alleged selling of objects after the passage of NAGPRA. Ms. Mattix explained that the regulations outline the process following an allegation of a violation. If a preliminary investigation reveals substantial evidence of a violation, the department will proceed with a hearing at the Office of Hearing and Appeals. A statute of limitations issue may need to be considered before the hearing process. Ms. Worl requested a report on the status of the issue brought by the Central Council of Tlingit and Haida Indians of Alaska (CCTHIA) concerning the sale of objects by the Taylor Museum for Southwestern Studies of the Colorado Springs Fine Arts Museum after NAGPRA was enacted. She stated that discussions occurred with both the National NAGPRA program and the Attorney General's office in Denver about the sale but CCTHIA has received no response. Ms. Mattix explained that this is a Federal case and the criminal portion is being handled by the Denver U.S. Attorney's office. The department would consider the appropriateness of invoking the civil penalty process for the case. Ms. Worl repeated her request for a report on the status of this issue.

Ms. Worl stated that the National NAGPRA update was well developed. She requested that review committee members receive the update for the next meeting a week prior to the meeting to allow time to review the information. This review would expedite the discussions at the meeting and promote better understanding of the contents. In response to a question by Ms. Metcalf, Mr. Robbins explained that there is no time limit for a dispute to remain inactive.

#### Action List

Mr. Robbins explained that the action list was in four sections: review committee requests for updates, review committee long-term requests, review committee short-term requests, and discussion points from the Kelseyville meeting. The action list reflects the current status of each item. Mr. Bradley expressed appreciation for the action list, and requested that an update on the Kennewick case be added as an action item for the next meeting.

#### **Dispute: Fallon Paiute-Shoshone Tribe and U.S. Department of the Interior, Bureau of Land Management, Nevada State Office**

[Note: Although this dispute was between the Fallon Paiute-Shoshone Tribe and the Department of the Interior, Bureau of Land Management (BLM), Nevada State Office, the terms "BLM" and "Nevada State Office" were used interchangeably during the presentation and discussion. For clarity in these minutes, the phrase "Nevada State Office" has replaced "BLM" unless it is clear that the speaker intended to reference the agency rather than the office.]

#### Introduction

Ms. Worl chaired the dispute between the Fallon Paiute-Shoshone Tribe and the U.S. Department of Interior, BLM, Nevada State Office. Ms. Worl first outlined the procedure for the dispute. She explained that she would ask Mr. Robbins to summarize the background of the dispute, review committee members' responsibilities, and the documentation provided by the parties. Then the review committee would confirm whether both parties would make oral presentations, and invite the two parties to make their presentations. Ms. Worl continued that, after both parties had an opportunity to present their case, review committee members may ask questions of, or make comments to, the parties. After this period of comments and questions, the review committee would have its discussion of the dispute. Ms. Worl said that the review committee could decide whether it needed additional time to consider the dispute after it had begun its discussions.

Mr. Robbins then summarized the background of the dispute. He explained that the dispute was proposed by the Fallon Paiute-Shoshone Tribe in a presentation at the Nashville review committee meeting, and was subsequently confirmed in a letter from the Fallon Paiute-Shoshone Tribe to the National NAGPRA program. The review committee chair and DFO reviewed the materials presented at that time and concurred that the dispute was a matter that fell within the responsibilities of the review committee. In discussions with both sides, the National NAGPRA program confirmed that the parties involved had sought to resolve the issue prior to the review committee's consideration of this dispute. The dispute was accepted for consideration and scheduled for the Cambridge, MA, meeting.

Mr. Robbins stated that the review committee's authority in the law is Section 8, Review Committee, paragraph (c), Responsibilities, item (4), "The review committee shall be involved in facilitating the resolution of any dispute among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such cultural items including convening the parties to the dispute if deemed desirable." In the regulations, the review committee's authority is under Section 10.17, Formal and informal resolutions of disputes, "The work of the review committee may include convening meetings between parties to the dispute, making advisory findings as to the contested facts, and making recommendations to the disputing parties or to the Secretary of the Interior as to the proper resolution of the disputes, consistent with these regulations and the Act."

Mr. Robbins said that both parties submitted documents for the review committee's consideration, which were summarized as an attachment to an October 31, 2001, memo and sent to review committee members prior to the meeting. Transmitted documents included 17 documents submitted by or on behalf of the Fallon Paiute-Shoshone Tribe and 2 documents submitted by the Nevada State Office.

Mr. Robbins reminded the review committee that, after presentations by the parties, review committee members can question the parties. Review committee members apply the laws and regulations to the matter at hand and can then make findings and recommendations, if desired. All discussions, findings, and recommendations are to be completed in the public meeting setting. Mr. Robbins said that review committee members are being asked to weigh the evidence from their various personal perspectives and areas of expertise and to make findings and recommendations towards resolving the dispute. The findings and the recommendations are advisory. Ms. Mattix, as legal advisor, is available to assist in citing relevant aspects of the law and regulations but will not provide interpretations of the laws or regulations or on-the-spot legal rulings.

#### Fallon Paiute-Shoshone Tribe

**Ms. Donna Cossette**, chairwoman of the Fallon Paiute-Shoshone Tribe, introduced Mr. Ashley George, spiritual leader for the Fallon Paiute-Shoshone Tribe. Mr. George presented a prayer in native Paiute language. Ms. Cossette explained that Mr. George is the son of Shaman Jimmy George and teacher Wuzzie George. Mr. George is a spiritual leader who is responsible for reburials. He is dedicated to preserving Paiute culture by educating younger generations in oral histories and teachings. Ms. Cossette introduced the representatives of the Fallon Paiute-Shoshone Tribe and experts present at the meeting. She explained details of the history of the Spirit Cave human remains and the dispute. The Fallon Paiute-Shoshone Tribe has testified at seven NAGPRA review committee meetings about its ongoing efforts to repatriate the Spirit Cave human remains. These remains were unearthed in 1940 by two amateur archeologists working for the Nevada State Park Commission. The area where Spirit Cave is located today is under the Nevada State Office's jurisdiction and is located within the aboriginal territory of the Paiute people, the *Toidikadi*, Cattail Eaters. Oral tradition has taught that Paiute people have occupied this land since the beginning of time. According to Ms. Cossette, the Fallon Paiute-Shoshone Tribe has the support of all Great Basin Indian tribes, as well as support throughout Indian Country, and there are no competing claims. She said that in July 2000, the Nevada State Office issued its decision that the Spirit Cave remains were culturally unidentifiable despite strong evidence supporting repatriation to the Fallon Paiute-Shoshone Tribe. The Fallon Paiute-Shoshone Tribe is requesting that the review committee consider information presented by the Fallon Paiute-Shoshone Tribe and the Nevada State Office. Ms. Cossette expressed confidence that the tribal submissions and testimonies presented at the meeting will provide more than sufficient evidence to support the repatriation of the Spirit Cave remains.

**Mr. Marc Slonim**, Ziontz, Chestnut law firm in Seattle, WA, identified himself as an attorney for the Fallon Paiute-Shoshone Tribe. He first presented an overview of the upcoming presentations. He then presented the interpretation that the Fallon Paiute-Shoshone Tribe has of the review committee's role under the statute and the term cultural affiliation under the Act. Mr. Slonim said that under Section 8, Review Committee, paragraph (c) Responsibilities, item (2) of the statute, "the review committee has a responsibility to monitor the inventory and identification process carried out under the statute to ensure a fair, objective consideration and assessment of all relevant evidence." He said that such monitoring did not occur in this case; this situation is a compelling case for the review committee to exercise that responsibility and make findings

about the Nevada State Office's identification process. Further, under the statute the review committee has a responsibility upon the request of any affected party to review and make findings related to cultural affiliation and return of cultural items. Mr. Slonim said that the Fallon Paiute-Shoshone Tribe is clearly an affected party with standing under NAGPRA and is making a request for the review committee to make findings regarding the cultural affiliation and return of the Spirit Cave human remains and funerary objects. Further, the review committee has a responsibility to facilitate the resolution of disputes among Indian tribes and Federal agencies. The Fallon Paiute-Shoshone Tribe has a dispute with a Federal agency and would appreciate the review committee's assistance in resolving that dispute. Finally, the review committee has a responsibility to recommend actions for developing a process for the disposition of culturally unidentifiable remains. If the Nevada State Office persists in its view that these remains are culturally unidentifiable, Mr. Slonim said that it is appropriate for the review committee to recommend actions for the Nevada State Office to take regarding the disposition of these particular remains.

According to Mr. Slonim, the Nevada State Office never specifically states its definition of the terms cultural affiliation or shared group identity under the Act. Its determination appears to be based on a narrow definition of cultural affiliation, requiring knowledge of Spirit Cave man's religious views, the social and political organization of his contemporaries, his material culture practices, and proof that these are the same as the contemporary Fallon Paiute-Shoshone Tribe. The Fallon Paiute-Shoshone Tribe does not believe that this is what NAGPRA requires. Several considerations lead the Fallon Paiute-Shoshone Tribe to that conclusion. First, the purpose of NAGPRA is to provide for the repatriation of Native American human remains. The purpose of requiring cultural affiliation, as explained in the legislative history of the Act, was to ensure that there was a reasonable connection between the claiming Indian tribe and the human remains. In the legislative history, Congress anticipated that there would be gaps in the record and said that those gaps should not block repatriation. The focus should be on the totality of the evidence and in particular on evidence pertaining to the connection between the claimant and the materials claimed. NAGPRA defines cultural affiliation as a relationship of shared group identity with an identifiable earlier group. Mr. Slonim said that "group" is an extremely broad term that can include any group of individuals with some unifying relationship.

In this case, Mr. Slonim said, the Spirit Cave human remains can be identified as part of a group of early Holocene occupants of the western Great Basin, with substantial connections between that group and the ethnographic *Toidikadi*, the people that were present at the time of contact in the western Great Basin and in the area where the Fallon Paiute-Shoshone Tribe lives today. That interpretation is reinforced by the special rules of construction that apply to legislation passed for the benefit of Native Americans. The courts have consistently and repeatedly said that statutes passed for the benefit of Native Americans should be construed broadly and ambiguous terms should be construed in favor of the Indian tribes. Mr. Slonim said that, based on considerations of geography and environment, subsistence economy and diet, material culture, burial patterns, biology, linguistics, and oral tradition, the evidence shows shared group identity between the early Holocene occupants of the Great Basin, including between the Spirit Cave remains and the Fallon Paiute-Shoshone Tribe. He said that the case for affiliation is quite strong. According to Mr. Slonim, the approach to the case that the Nevada State Office used involved a very narrow and technical view of cultural affiliation. He said that the Nevada State Office never explicitly acknowledged this approach. Mr. Slonim said this approach was wrong.

**Mr. Ashley George** explained that he lived with the Fallon Paiute-Shoshone Tribe until moving to Sacramento in 1958 after being drafted into the Army. He did not hear about the Spirit Cave human remains until four or five years ago. Mr. George gave an overview of the Paiute people, where they live, what they do, and how they came to live in Stillwater. The Paiutes of Stillwater have always lived in and around Stillwater marshland in the Great Basin, according to Mr. George. They were created by the Creator just east of Stillwater Marsh on Fox Peak, part of the Stillwater Mountain Range. Mr. George said that the old people have passed on this story from generation to generation. The Paiute were put here with the skills of survival, wisdom, and knowledge. They lived among plants, animals, birds, and fish. These things were important for food and medicine. Mr. George explained that the Indian way of life is very sacred and all things are respected. Paiute words and language are used in everyday life. Paiute words come from within, which is why they have a lot of feeling. The Paiute language does not have a word for "caveman." Mr. George explained that the Paiute do not disturb graves or gravesites. Permission cannot be obtained to do so. The Creator takes people and if someone disturbs and breaks that cycle there will be consequences to others close to the person and finally that person. Mr. George said that the Paiute now have to explain what they are doing so no harm will come to them when they are returning ancestors back to continue their cycle. The Paiute have names for other people who arrived in the Great Basin, and the Great Basin area Indians were identified by what they ate. Mr. George explained that the Paiute belief is that the Creator created them. After life is over, He comes for them and leads them away by the hand. When they are buried, they are put back in Mother Earth's womb. When they are removed, Mother's womb was opened and robbed of what belongs to her. The cycle of life is disrupted.



**Mr. Alvin Moyle**, former chairman of the Fallon Paiute-Shoshone Tribe, explained that he has been before the review committee on numerous occasions and was pleased to be able to submit testimony regarding Spirit Cave remains at the Cambridge meeting. Mr. Moyle presented maps to the review committee detailing the Great Basin. This area is comprised of Nevada, the lower part of Oregon, the eastern and western side of Idaho, and parts of California. One map showed the range of the Paiute people and the specific area inhabited by the Fallon Paiute-Shoshone Tribe (*Toidikadi*). Another map showed a detailed view of Paiute traditional homelands, which includes the Stillwater Mountains, Carson Sink, and the city of Fallon. Another map illustrated the present-day reservation of the Fallon Paiute-Shoshone Tribe. Mr. Moyle pointed out the location of sacred places and explained why these places are important to the Paiute people. Fox Peak, or Jobs Peak, is where Paiute people were created and Table Mountain is also sacred. Seehoa (phonetic) Mountain and Grimes Point are burial places, Mr. Moyle explained, and Spirit Cave is located in this area. Mr. Moyle explained that to use the name “Spirit Cave” bothered him, and that there is no such thing as a “spirit cave.” He said that the cave was a place where a person was laid to rest and would be considered a cemetery today.

Mr. Moyle then described different food sources that the Paiute people have utilized throughout time. He also described the areas where these important resources were found, and said that these areas have been and are still utilized by the Paiute people. He named the Carson Sink, the Stillwater Marsh, and Carson Lake as some of these areas. Mr. Moyle described how rabbit skins, tule plants, and willows were utilized for food and other purposes. He said that Paiute creation stories explain how Paiute people were created from Jobs Peak, which is located about 10 miles from the current reservation. The Paiute have been taught that they are all a part of a cycle that when disrupted creates disharmony. Mr. Moyle explained that the earth and everything on it is sacred. Each time people disrupt the earth and continuously take without giving back, the Paiute community is adversely affected. He said that this is evident through the removal of ancestors from their burial sites, which created discontent in the Paiute communities.

Mr. Moyle stated that he has read what the Nevada State Office has submitted and he does not find the Nevada State Office’s conclusion to the Spirit Cave human remains as evidence that the remains are not culturally affiliated with the Paiute people. Mr. Moyle thanked the review committee.

**Ms. Donna Cossette** referred to the maps provided to the review committee. She pointed out the location within the small mountain range from which the Spirit Cave human remains had come. She said that there are other burial caves in that area that are well known to the Paiute people. The Paiute people avoid these areas out of fear of getting ghost sickness. In response to questions by Mr. O’Shea and Mr. Hart, Ms. Cossette explained that the distance across the map is approximately 30 miles; Fallon is 12 miles from the reservation and the marsh is approximately 7 miles from the reservation.

Ms. Cossette said that the Nevada State Office disputes the Fallon Paiute-Shoshone Tribe’s willingness and eagerness and has continued to fail to conduct meaningful consultation. Since the process began in 1995, the Fallon Paiute-Shoshone Tribe has only consulted with the Nevada State Office regarding the repatriation of the Spirit Cave remains three times, according to Ms. Cossette. She stated that the Nevada State Office has misinterpreted the oral tradition stories of Paiute elders. By refusing to allow the Fallon Paiute-Shoshone Tribe to refute the Nevada State Office’s determination, Ms. Cossette said that the Nevada State Office was disregarding its government-to-government relations and its fiduciary responsibility. Ms. Cossette maintained that the Nevada State Office had ignored the efforts of the Fallon Paiute-Shoshone Tribe and that this was also evidenced by the lack of representation by the Nevada State Office at this meeting. Ms. Cossette concluded by stating that the Spirit Cave human remains have been disputed long enough and deserve, just as every other United States citizen, the right to complete his journey to the paradise in the clouds.

**Mr. Mark Plew**, Boise State University, provided a brief introduction to the concept of the Desert Archaic culture area, summarized continuity in the material record from prehistoric times to the ethnographic period, and addressed what the Fallon Paiute-Shoshone Tribe considers to be inconsistencies and biases in the Nevada State Office’s determination. Mr. Plew explained that the culture area concept shows a relationship between culture and the use of resources in a given environment. The distribution of languages is another important relationship that is recognized between and within culture areas. He explained that in the culture area of the Great Basin, cultural groups share several similarities. First, they have a common use of seeds and plants and a common technology, particularly basketry and textiles, which is associated with that exploitation. Second, their use of small mammals as both food and clothing is very similar. Finally they share similarities in how they use varied environments. Mr. Plew described how these similarities led Mr. Jesse Jennings, an archeologist in the 1950s, to describe the Desert Archaic or the desert

cultural lifeway, which he believed remained relatively unchanged for perhaps as much as 10,000 years in the American Great Basin. Mr. David Thomas also demonstrated the varied use of environments by aboriginal peoples in the Great Basin. While Great Basin archeologists recognize regional variation, they also talk about continuity in the archeological record for the last 10,000 to 11,000 years.

Mr. Plew said that the record of archeological continuity covers 10,000 to 12,000 years in the Great Basin. In the northern Great Basin in particular, archeological evidence of use of the region exists during the Middle Holocene, approximately 4,500 to 7,500 years ago. Mr. Plew explained that there is twining was present at Spirit Cave and also occurs during the ethnographic period. Mr. Donald Tuouy and Ms. Amy Dansie have noted that twine mats such as those found at Spirit Cave date from as early as 9400 BP to recent times. Mr. Plew said that he thought that some of the strongest evidence for continuity derived from the relationship between Lovelock culture and Northern Paiute culture, and specifically in material from Lovelock Cave. Lovelock Cave is one of several archeological sites located in the vicinity of the Carson Sink. Material from this site date to as early as 2500 BC. Mr. Plew described how Mr. Gordon Grosscup's work draws connections between the archeological evidence of Lovelock Cave and that of the Northern Paiute. According to Mr. Plew, Mr. Grosscup examined 92 individual traits and determined that over 50 of those traits are found both in the prehistoric context of Lovelock Cave and the present time. Mr. Plew also noted that the human remains and associated funerary objects from Lovelock Cave that National Museum of the American Indian repatriated to the Lovelock Paiute Colony dated to about 3400 BP. He said that the report on that particular repatriation, while uncertain about certain aspects of Mr. Grosscup's analysis, stated very specifically that the Northern Paiute Indians have a stronger cultural relationship to the human remains and associated grave goods from Lovelock Cave than do any other Native American group.

Mr. Plew addressed some of the deficiencies in the Nevada State Office's determination. He said that, first, the Nevada State Office asserts that there is no evidence for cultural affiliation and that the determination does not consider the extensive evidence of material culture, some of which Mr. Plew had described. He stated that continuity between prehistoric and ethnographic material cultures has been demonstrated by other archeologists, including Fowler, Grosscup, Grayson, Connolly, and Sprague, and at archeological sites other than Spirit Cave. Second, according to Mr. Plew, the Nevada State Office cites Mr. Grayson's work as documenting significant population declines and area abandonments during the Middle Holocene, but it ignores other work by Mr. Grayson, which includes over 23 sites for that period. It also ignores a separate report by Mr. Grayson to the Fallon Paiute-Shoshone Tribe. That report argues against the Nevada State Office's interpretation of Mr. Grayson's work in favor of the Nevada State Office's position that the area was abandoned and population declined. Mr. Plew's third point was that, in his view, the Nevada State Office relies almost exclusively on textiles as the primary hallmark for determining culture change and uses discontinuities in basketry forms as the basis for the argument that the area was periodically abandoned. He stated that the Nevada State Office failed to represent the archeological record adequately and Mr. Plew pointed out that basketry is found over the entirety of the Great Basin for some 9,000 years. Mr. Plew's fourth point was that the Nevada State Office argues that there are discontinuities in three basketry technologies or styles (Lovelock wickerware, coiled basketry, and warp faced plain weave) and ignores the appearance of these styles in the prehistoric record, which noted Great Basin ethnographers and archeologists have documented. Apparently there have been instances in which these same types of basketry have been repatriated to Paiute peoples.

Mr. Plew concluded by characterizing the Nevada State Office's determination as inaccurate and incomplete. He indicated that the determination was representative of a perspective that many archeologists presently hold regarding the ability to establish ethnicity on the basis of changes in material culture, and that he considered this perspective to be naïve. Mr. Plew said that the Nevada State Office's determination does not appreciate and makes no case for the dynamic nature of the archeological record of aboriginal peoples. In Mr. Plew's view, this record clearly demonstrates that Paiute peoples were present and utilized the environment in many ways and maintained much of the same material culture for literally thousands of years.

**Mr. Roderick Sprague**, University of Idaho, thanked the review committee for the opportunity to speak. Mr. Sprague explained that he reviewed information on the burial practices of the Great Basin from archeological, ethnographic, and ethnohistoric sources, including various documents of the military, missionaries, and early settlers. Mr. Sprague found a distinct pattern of inhumation among and under rocks, in the earth, in rock crevices, and in caves. He reported that a general association with rock seemed important. He also noted that cremations sometimes had been practiced. According to Mr. Sprague, burial practices were quite different in the Great Basin when compared to other geographical areas. He characterized Great Basin area burials as hidden and not revisited, and contrasted them to platform burials in the Plains, and midden or cremation burials in the Southwest. In developing a pattern for Spirit Cave, Mr. Sprague found the pattern of

contemporaneous cremation and inhumation or covering with rocks to be from the very earliest time period, a pattern noted by Mr. Fowler and others. Mr. Sprague disagreed with the Nevada State Office's contention that Spirit Cave had not been used for 4,300 years. He explained that people knew about the remains in the cave and left them alone; by protecting these individuals, people were using the cave. Mr. Sprague stated that the Nevada State Office's report tended to confuse specific traits with patterns. While Mr. Sprague looked for and found a general pattern of inhumation and cremation, the Nevada State Office saw differences of orientation, position, or deposition as being significant and interpreted this variation as representative of different people.

According to Mr. Sprague, the Nevada State Office supports its theory of Numic expansion by citing examples of change in burial practices such as at the Elephant Mountain site where the burials were flexed. Mr. Sprague reported that in some situations changes in burial patterns can occur almost overnight in response to outside influences. Mr. Sprague said that a second reason the Nevada State Office contends that a new population had come in is based on the presence of extremely wealthy infant and child burials, which points to parental wealth and higher status and suggests social stratification. Mr. Sprague stated this is not a valid reason and cited instances of infants and children with very rich burials from egalitarian Indian tribes. The Nevada State Office's third reason was that new basketry types had appeared; Mr. Sprague said that Mr. Plew had discussed this matter. Regarding burials from Stillwater Marsh, Mr. Sprague said that the Nevada State Office did not consider his pattern to be valid because these individuals were buried in sandy soil. He explained that the burials had been made when the water level was low and the sandy soil was available and offered easier digging than rocky soil. He also noted that the survey from which he derived his information had been limited to sandy areas; burials could exist in the rocky areas of Stillwater Marsh that were not discovered during the survey. Finally, the Nevada State Office largely ignored the ethnographic evidence, according to Mr. Sprague, and it had used a biased sample instead of considering the whole record as Mr. Sprague did. Mr. Sprague added that the Paiute people today still know where these burials are, watch them, and take care of them. He concluded that the evidence from burial practices indicates continuity from 9,000 years ago to the present time.

**Mr. Alan Goodman**, Hampshire College, thanked the review committee for the opportunity to speak. He explained that, while he has not worked in the Great Basin, he has 25 years of experience working on bones, teeth, and questions of ethnicity and continuity throughout North American and other parts of the world. Mr. Goodman stated that the Nevada State Office made mistakes in its report regarding biological data. The first is the inability of the Nevada State Office to rank order the data and to consider which data can resolve questions and which cannot. The second is the Nevada State Office's assertions of what the data do not prove, instead of indicating what the data do prove. Mr. Goodman discussed five aspects of the data: DNA, craniometrics, paleopathology and lifestyle, hair, and dentition.

According to Mr. Goodman, there is no evidence in either the DNA or the protein polymorphism studies that have been done in the area to argue against any sort of continuity to the present. He said that the Nevada State Office's report suggests that DNA does not indicate particular affiliation, but Mr. Goodman said that DNA would never support affiliation, anyway.

Mr. Goodman said that the craniometric study of the Spirit Cave human remains completed by Mr. Douglas Owsley and Mr. Richard Jantz in 1997 showed no craniometric relationship between Spirit Cave remains and any Native American group. The report went on to say that the remains showed no relationship to any contemporary group in the world in their sample. Mr. Goodman explained that this means that Mr. Owsley and Mr. Jantz were not able to find any relationship between the Spirit Cave human remains and any contemporary individual. The remains from Spirit Cave are 9,000 years old and are different from contemporary individuals, and Mr. Goodman attributes the lack of relationship to evolution through time. He pointed out that craniometrics also can change due to diet.

The aspects of paleopathology and lifestyle discussed by Mr. Plew and Mr. Sprague can be supported biologically through the bones and teeth, according to Mr. Goodman. He said that the arthritis present in the Spirit Cave human remains is suggestive of working in a rough-terrained environment, and string grooving on anterior teeth of Spirit Cave man could be attributed to working material through the teeth perhaps for netting or fish line. Both of these biological findings suggest lifestyle continuities.

Mr. Goodman said that the hair of the Spirit Cave human remains is reported at various times as brown in the Nevada State Office report, while in the original work discovery the hair is reported as black and straight. The Nevada State Office concludes no affiliation with a particular Indian tribe in their summary about the hair. While hair cannot indicate specifically where an individual is from, the hair from the Spirit Cave human remains is consistent with that of Native Americans from the Great Basin area.

Study of the teeth does indicate without a doubt biological affiliation with Native Americans and specifically with Paiute, according to Mr. Goodman. Teeth are influenced by strong genetic control. Mr. Goodman said that Mr. Christy Turner's study of 25,000 individuals demonstrated patterns in teeth, including a clear pattern from Native Americans. Mr. Goodman reported on five dental traits identified in a book by Mr. Richard Scott and Mr. Turner and a comparison of the Spirit Cave human remains to worldwide variation in the dental traits. The teeth of the Spirit Cave human remains were consistent with those of Native Americans for the following dental traits: molar enamel extensions, Carabelli's trait, upper central incisor interruption grooves, upper central incisor winging, and upper central incisor shoveling. Mr. Goodman said that the presence, or lack thereof, of five out of five dental traits in the Spirit Cave human remains is statistically very high and about as close to scientific proof as is possible. According to Mr. Goodman, a comparison of a variety of other groups to the Spirit Cave and Wizard's Beach human remains by Mr. Turner shows that the teeth of the Spirit Cave human remains look most closely like contemporary Paiute individuals of Nevada.

**Mr. Marc Slonim** stated that in addition to the lifestyle indicators shown from the skeletal remains that were explained by Mr. Goodman, additional information was published by the Nevada State Museum based on diet, environment, and other information. Mr. Slonim reported that those studies show that Spirit Cave man's diet included food that was both part of the diet of the archeological peoples in the area and the contemporary Northern Paiute. The environmental factors also prove to be similar from the archeological period into the ethnographic times. According to Mr. Slonim, Mr. Tuouy and Ms. Dansie, two opponents of repatriation of the Spirit Cave human remains, concluded that the people represented by the remains at Spirit Cave from 9,400 years ago were subsisting on the same basic food stuffs as their successors and bore many similarities to cultures in the region thousands of years later. Mr. Slonim reported on a study by Mr. O'Rourke of the distribution of DNA haplogroups among ancient and modern populations. He said that the study showed that the distribution of haplogroups in different populations shows a geographic pattern, present in both ancient and modern samples. The Stillwater Marsh and Pyramid Lake groups are ancient samples that date from 300 to 6,000 years ago, and are similar to the modern Paiute-Shoshone sample. Mr. Slonim said that Mr. O'Rourke did note some differences and that he had a very limited sample for Paiute-Shoshone. However, a comparison of data developed by Ms. Frederika Kaestle with a much larger sample of modern Uto-Aztecan speakers confirmed the similarities. Mr. Slonim concluded that these data demonstrate stability and continuity and show a connection at the level of resolution needed for the purposes of NAGPRA and for purposes of repatriation.

**Mr. Brian Chestnut**, attorney with Ziontz, Chestnut Law Firm, discussed the linguistic and oral evidence, both of which provide positive evidence in favor of shared group identity between the modern Fallon Paiute-Shoshone and the human remains from Spirit Cave. According to Mr. Chestnut, at the time of contact, the Northern Paiute language was Paviotso, which is a Numic language and part of the Uto-Aztecan stock of languages. Mr. Chestnut said that Mr. James Goss and later Mr. Melvin Aikens, both well-known Great Basin scholars in linguistics, have found that the way in which Uto-Aztecan language groups are dispersed from Mexico to Idaho shows that the original Uto-Aztecan speakers were centered in the Great Basin. Both Mr. Goss and Mr. Aikens estimate that these speakers were centered in the Great Basin 10,000 or 11,000 years ago. Regarding the oral tradition evidence, Mr. Chestnut reported that Mr. Goss and Mr. Deward Walker both submitted a fair amount of evidence that Uto-Aztecan people were created in their present homeland based on their origin stories. They contrasted these origin stories to many other Native American stories in which migration was discussed. They also noted that the Paiute are referred to as the People of the Lakes, referring to the time of Spirit Cave man and beyond, when there were large bodies of water in the Great Basin. Mr. Chestnut said that in using oral tradition evidence, the Nevada State Office only recognized one story. He said that this story is about redheaded giants and is not an origin story. The Nevada State Office discussed this legend at length, according to Mr. Chestnut, and it concluded that the Fallon Paiute-Shoshone Tribe's claim was not supported by the oral tradition because there were at least two groups in the area. Mr. Chestnut said that since the only two groups mentioned by the Nevada State Office were the redheaded giants and the Northern Paiute, that should have been considered supportive of the Fallon Paiute-Shoshone Tribe's claim.

Mr. Chestnut also said that the Nevada State Office discusses the Numic expansion hypothesis, based on Lamb's model of 1958. He said that the model hypothesizes that there were three Numic languages spoken in the far southwestern Great Basin until approximately 1,000 years ago. At that time, there was a dramatic movement northward and eastward of thousands of people within a relatively short time frame. Mr. Chestnut explained that references show controversy over where and when the expansion originated and also exactly what occurred. He said that the evidence showed that there is continuity, and so it directly contradicts the Numic expansion hypothesis. Archeological evidence, including the material culture and the burial practices, shows continuity back 10,000 years. He added that the biological evidence presented in this case also contradicts the Numic expansion theory, as shown by the work of Mr. Turner, Mr. O'Rourke and Ms. Kaestle.

Mr. Chestnut stated that the Nevada State Office relied on the Numic expansion hypothesis in order to prevent repatriation of Spirit Cave human remains once the Nevada State Office had learned that the remains dated to 9,400 years ago. He referred to the report provided by the Fallon Paiute-Shoshone Tribe and stated that it contained written and public statements and other evidence in the record that indicate that the Nevada State Museum officials, Ms. Dansie and Mr. Tuouy, were predisposed against Native Americans generally and predisposed against repatriation specifically in this case. He said that they had called it a crime against humanity. According to Mr. Chestnut, key players at the Nevada State Office, including Mr. Pat Barker, have put in writing their attitudes about NAGPRA, especially the responsibilities that apply to Native American remains, and have called it an anti-science social trend.

Mr. Chestnut then summarized the events of the case. He said that once the Spirit Cave human remains were dated to 9,400 years ago, Mr. Barker and Ms. Dansie attempted to stop or delay repatriation. Mr. Chestnut reported that the record contains a memo that Mr. Barker said, quote, any remains over 3,000 years, unquote, definitely should be listed as unaffiliated and affiliation should not be assumed unless explicit in the record. Mr. Barker instructed the museum how to do its inventory when no claim had been submitted and no evidence had been reviewed from the Fallon Paiute-Shoshone Tribe, according to Mr. Chestnut. He said that Mr. Barker encouraged delay of repatriation by making sure that as many Native American groups as possible received information about the Spirit Cave human remains, in an effort to increase conflicting claims. According to Mr. Chestnut, the Nevada State Office was not fair to the Fallon Paiute-Shoshone Tribe in the process and misrepresented its position by claiming that no decision had been made when it had. When the Fallon Paiute-Shoshone Tribe submitted a claim, it was done on behalf of all Northern Paiute people and was endorsed by the National Conference of American Indians (NCAI). Mr. Chestnut said that the Nevada State Office's determination followed the lead of the Nevada State Museum and adopted various controversial theories of craniometric measurements, the Numic expansion hypothesis, basketry technologies, and the redheaded giant myth.

Mr. Chestnut then turned to a discussion of consultation. He said that the Fallon Paiute-Shoshone Tribe requested to consult with Mr. Robert Abbey, director of the Nevada State Office, in a series of three consultations so that it could better understand the Nevada State Office's assessment of the evidence and to present research. The Nevada State Office refused to consult, according to Mr. Chestnut. He next described how the review committee asked the Nevada State Office to consult and Mr. Abbey maintained his position that there was no need to consult. After the Fallon Paiute-Shoshone Tribe submitted its materials, Mr. Chestnut said, Mr. Abbey wrote that until the tribal submissions had been received and reviewed, the only information that the Nevada State Office had about the Spirit Cave human remains was that they were culturally unidentifiable. Mr. Chestnut said that instead of consulting with the Fallon Paiute-Shoshone Tribe, Mr. Abbey provided the tribal materials to the Nevada State Museum for its review and comment. Eight months after the tribal materials were submitted, the Nevada State Office submitted its determination to the Fallon Paiute-Shoshone Tribe that according to the Nevada State Office, the remains are culturally unidentifiable. Mr. Chestnut said that the Fallon Paiute-Shoshone Tribe asked for more time to respond because the Nevada State Office's decision was preliminary. The Nevada State Office refused and made its decision final. According to Mr. Chestnut, the Fallon Paiute-Shoshone Tribe came to the review committee, which is clearly appropriate under the statute. He said that the Nevada State Office took the position that the review committee was not the right place to come and that the Fallon Paiute-Shoshone Tribe was not supposed to come before it. The Nevada State Office's absence at the meeting is consistent with the way that the Nevada State Office has handled this process, especially since the Fallon Paiute-Shoshone Tribe has had the benefit of consultants on its side, according to Mr. Chestnut. He said that the Nevada State Office does not want to be questioned or subject its invalid theories to any scrutiny.

#### Review Committee Discussion

Ms. Worl asked for representatives of the BLM or Nevada State Office to identify themselves. She explained that letters had been sent to both the Fallon Paiute-Shoshone Tribe and the Nevada State Office informing them that the review committee would be considering the dispute on this date. Ms. Worl invited representatives from the Nevada State Office to come forward twice more. No representatives from the Nevada State Office came forward.

Mr. Robbins explained that in correspondence from the National NAGPRA program, the Nevada State Office was asked to identify who would be its representative at the review committee meeting, but the Nevada State Office did not identify an individual. Ms. Worl asked that the record show that an invitation was extended, that the Nevada State Office was advised of this dispute hearing, that the review committee invited the Nevada State Office again at this meeting to come forward, and that the Nevada State Office had not responded when questioned about its representative.

Mr. Minthorn asked what kind of relationship or commonalities are present between Spirit Cave, Wizard's Beach and Lovelock Cave. Mr. Goodman explained that while he is unaware of any systematic study of biological relatedness between human remains from the three caves, genetic relationships and similar dental patterns have been shown. Mr. Moyle added that tribal beliefs and oral tradition indicate a relationship between the human remains and materials from Spirit Cave, Lovelock Cave, and Wizard's Beach. The material and the human remains that are found in these other locales prove that there were also Paiute people in that area, according to Mr. Moyle. He added that this conclusion is supported both by expert testimony and tribal beliefs. In response to a question by Mr. Minthorn, Ms. Cossette explained that there are 23 Great Basin Indian tribes, all of which support this request. She said that the Indian tribes in Nevada are in the process of coordinating the Great Basin NAGPRA Coalition. Mr. Bailey asked about the graph attached to the report from Mr. O'Rourke and explained that he had questions regarding inconsistencies, which cause him to question the validity of the data. Mr. Goodman explained that there are a couple of reasons why one could expect inconsistencies. One is that there is no absolute relationship between any biological or genetic data and culturally distinct groups; another reason involves understanding the information in the data set. Mr. Bailey explained that he had questions on the validity of the approach; otherwise the information is intriguing support for the Fallon Paiute-Shoshone Tribe's position.

Mr. Bradley thanked the members of the Fallon Paiute-Shoshone Tribe and the experts for their presentations and work together. He asked Mr. Plew about his level of comfort that the Spirit Cave human remains are part of an earlier identifiable group that is connected to the present-day Northern Paiute people over a span of 400 generations. Mr. Plew responded that while there are gaps in the record, he thought that the preponderance of the data presented to the review committee, including evidence relating to material culture, demonstrates continuity over time. He said that the body of data is from numerous different sources. There are different ways to consider the matter of a common existence of shared identity and the material record can be used in conjunction with other data to make that argument. Mr. Plew concluded that there is substantial evidence of continuity over the past several thousands of years.

Mr. Bailey expressed concern that after 400 generations, there is a very large number of ancestral positions. While he has no doubt that the Spirit Cave human remains are Native American, Mr. Bailey explained that on the basis of antiquity alone the Spirit Cave human remains are ancestral to virtually everyone of American Indian ancestry living today. He questioned whether the Spirit Cave human remains could be more closely related to one community than another. Mr. Slonim pointed out that much more is known about the Spirit Cave human remains than just age, including details about where he lived, and his diet, lifestyle, environment, and material culture. He related that the people had utilized sophisticated textile technology, the foods were similar to those in the area over time, and that people in ethnographic times knew of burials that are thousands of years old. Mr. Bailey pointed out that the lifestyle in the Great Basin area is roughly the same throughout time, so continuity in those areas neither proves nor disproves affiliation. He suggested that affiliation should be to a larger group and that a larger group should be making this request. Mr. Slonim explained that in this case there has been no claim of direct lineal descent. He said that one Indian tribe has submitted a claim on behalf of all of the Indian tribes in Nevada, and it is supported by NCAI. The Fallon Paiute-Shoshone Tribe has come forward with a variety of evidence showing a connection to the people that lived in the Great Basin 10,000 years ago. He said that NAGPRA directs consideration of evidence to determine whether there is a reasonable connection to support repatriation, which has been done in this case. Mr. Bailey expressed concern that some Indian tribes who are not proactive can be left out of the process; all Indian tribes need to have an opportunity to define their interests under NAGPRA. Mr. Slonim pointed out that this repatriation effort has been very widely reported and is very well known, and that the Fallon Paiute-Shoshone Tribe has put tremendous resources into this effort. He said that other Indian tribes do not have the same connection to this area as the Fallon Paiute-Shoshone Tribe. Ms. Metcalf asked about the resources expended by the Fallon Paiute-Shoshone Tribe. Mr. Moyle responded that he would try to get that information to the review committee and added that the Fallon Paiute-Shoshone Tribe would go to the same efforts for any ancestral remains. He explained that when the council first heard of the Spirit Cave human remains, there was no hesitation or discussion of the costs.

Mr. O'Shea expressed respect and admiration for Ms. Cossette and Mr. Moyle and their efforts over the years with respect to this issue. He expressed concern that the Nevada State Office was not represented at the meeting, and stated that it was difficult to weigh evidence if one side is not present. Mr. O'Shea cited the Nevada State Office's letter of October 26, 2001, in which the Nevada State Office was quite clear that it would not be present at the meeting. He said that the expanse of 9,400 years makes it difficult to imagine what would constitute convincing evidence of cultural affiliation over that period of time. Mr. O'Shea summarized the different types of evidence. The evidence of shared lifestyle was not conclusive, since virtually anyone living in the Great Basin is going to basically have the same lifestyle, resources, seasonal stresses, food sources, and skeletal stress and disease markings. Biological evidence did not provide strong or conclusive proof either for or against a claim of cultural affiliation. However, since much of the Nevada State Office's case rests on the Numic

expansion theory and a discontinuity in population, proof of biological continuity would support the argument of the Fallon Paiute-Shoshone Tribe. Although there is no doubt that the Spirit Cave human remains are Native American, beyond that, the evidence for cultural affiliation is inconclusive. The burial evidence was ambiguous when considering 9,000 years. Burial practices can be good indicators of ethnicity, but can change quite abruptly and are subject to environmental influences. Linguistics provide very little direct evidence. Some critical elements that both underpin the Nevada State Office's case and are central to the Fallon Paiute-Shoshone Tribe's argument against the Nevada State Office come down to issues like the Numic expansion and are difficult to evaluate on the evidence at hand.

Mr. O'Shea concluded his comments by saying he felt that the evidence supported the Native American origin of the Spirit Cave human remains and a common existence in terms of lifestyle, technology, and subsistence. He said that the Fallon Paiute-Shoshone Tribe shares a cultural relationship with the place and the prior inhabitants of Spirit Cave, but that does not equate with cultural affiliation as expressed and defined in NAGPRA. This issue comes down to a consideration of group, and that cultural affiliation is more specific than a technocomplex, as demonstrated by the Desert Archaic. Mr. O'Shea offered two suggestions. One, since much of the Nevada State Office's argument seems based on continuity or discontinuity, a demonstration of a biological relationship between the Spirit Cave human remains and modern Paiute populations would diminish an argument of discontinuity. Two, the Great Basin NAGPRA Coalition could move forward under the developing regulations on culturally unidentifiable human remains. Mr. O'Shea said that the Fallon Paiute-Shoshone Tribe could do this without relinquishing its position that this is really an ancestor but still acknowledging that there are different standards of proof for establishing cultural affiliation than cultural relationship.

Mr. Slonim responded by saying that NAGPRA defines cultural affiliation as a relationship of shared group identity between a present-day Indian tribe and an identifiable earlier group. He said that NAGPRA was designed to provide for the repatriation of Native American human remains. Mr. Slonim stated that there seems to be agreement that the Spirit Cave human remains are Native American and the statute should be construed in a way that promotes their repatriation. He said that there is substantial evidence of similarity between the human remains from Spirit Cave and his successors in the Great Basin up to and including the Fallon Paiute-Shoshone Tribe today. The point that everybody that lived in the Great Basin would have lived in similar ways distinguishes people of the Great Basin from other areas. Anthropologists designated the Great Basin as a unique culture area, and this could be considered the beginnings of a broad group with subgroups. Mr. Slonim reviewed evidence presented in the case that supports cultural affiliation. He said that the Fallon Paiute-Shoshone Tribe continues to believe that it has a very compelling claim under the Act and that the review committee has a responsibility to review the Nevada State Office's process and objectivity. Mr. Slonim said that the review committee should make findings about cultural affiliation and should recommend that the Nevada State Office discuss the possibility of returning these human remains no matter what the Nevada State Office ultimately concludes about affiliation.

Mr. Goodman expanded on the fact that DNA testing would not be a very powerful method of determining biological or cultural continuity. Mr. Slonim added that population flows used to be viewed as new groups' completely displacing other groups, but now archeologists know that change rarely happened in that manner. For the most part, human populations have merged and left biological and cultural remnants. If there was a Numic expansion, it would have had little impact on cultural continuity through 9,000 years from Spirit Cave to the contemporary Numic descendants of Spirit Cave. According to Mr. Slonim, the biological evidence, specifically the dental traits, suggests biological continuity in a broad sense through 9,000 years. Mr. Slonim said that the experts discussed cultural, linguistic, archeological, material culture, and lifestyle evidence, and all of this suggests the possibility of groups merging and sharing lifestyles and cultures from 9,000 years ago to the present.

Mr. O'Shea pointed out the inconsistency of arguing that some sets of biological traits can be observed from a single individual as a valid comparison to a population and others cannot. The problem with the assimilation model and Numic expansion was serious, because if the entire language of the cultures occupying the region changes, it is very difficult to argue that that is still the same culture, regardless of whether there is certain biological inheritance in that population. Ms. Cossette explained that her family stayed in the Stillwater area, despite efforts to make them move, because of their responsibility to protect the human remains of those who had passed on. Mr. Slonim pointed out that language change does not always mean culture change. He said that the persistence of Native cultures in the face of massive change brought about by European settlement of North America is proof of Mr. Goodman's position that people have the ability to adapt and preserve cultures despite enormous change and influence.

Mr. Minthorn asked whether the three meetings between the Fallon Paiute-Shoshone Tribe and the Nevada State Office were considered consultation. Mr. Chestnut explained that there was some contact before the Fallon Paiute-Shoshone Tribe

had the benefit of scientific and legal advice, although since that time there has been no consultation under NAGPRA. He said that the Fallon Paiute-Shoshone Tribe proposed a series of three consultation meetings to understand the evidence compiled by the Nevada State Office, to give a preliminary analysis from the point of view of the Fallon Paiute-Shoshone Tribe and get feedback, and then finally to present the finished tribal projects. Mr. Chestnut stated that the Nevada State Office would not agree to the meeting, saying that it was not prudent to hold predecisional consultations. Despite a request from the review committee at that point, the Nevada State Office still refused to meet with the Fallon Paiute-Shoshone Tribe, according to Mr. Chestnut. The final version of the tribal materials was submitted in 1999, and included a request for consultation and the review committee's recommendation. According to Mr. Chestnut, Mr. Abbey responded that there was no need for consultation. Further protest from the Fallon Paiute-Shoshone Tribe resulted in a consultation meeting in March 2000. The Fallon Paiute-Shoshone Tribe brought Mr. Walker, an expert scientist, as well as tribal representatives. However, the only the Nevada State Office representatives were Mr. Abbey and his assistant. Mr. Chestnut said that after the Fallon Paiute-Shoshone Tribe presented its evidence, the Nevada State Office did not provide any feedback. Five months later the Nevada State Office provided its decision to the Fallon Paiute-Shoshone Tribe. Mr. Minthorn stressed the importance of the consultation process. He then asked about the Indian Claims Commission citations referenced in the tribal presentation. Mr. Slonim explained that the Court of Claims decision is reported at 393 Fed2nd 786, pages 791 and 792. The Indian Claims Commission decision is reported at 7 Indian Claims Commission 322, pages 334 and 335. An earlier decision involving the Indians of California was reported at 22 Court of Claims 348. Mr. Minthorn stated that the area of scientific study continues to be a struggle. He said that although NAGPRA acknowledges science and science does have a role, NAGPRA does not require scientific certainty. Tribal histories cannot be underestimated in comparison with scientific evidence, but should be weighed equally.

Ms. Metcalf agreed with Mr. Minthorn that consultation did not occur in this case. She stated that if the Nevada State Office claimed that there is insufficient evidence of the existence of an identifiable earlier group for the Spirit Cave human remains, perhaps consultations between the Fallon Paiute-Shoshone Tribe and the Nevada State Office could identify an earlier group. Ms. Metcalf added that the review committee has recommended the repatriation of culturally unidentifiable human remains when it had much less evidence to consider than was presented in this case. Mr. Bailey asked whether the Nevada State Office responded directly to issues raised by the Fallon Paiute-Shoshone Tribe. Mr. Slonim explained that the Nevada State Office's determination was the only response and a lot of tribal materials were ignored. Mr. Hart explained that he has been in the area described by Ms. Cossette and understood the efforts made by these people to survive in this area. He commended the representatives of the Fallon Paiute-Shoshone Tribe for their presentations.

Mr. O'Shea asked about correspondence from the Nevada State Office dated August 15 and October 17, 2000, in which the Nevada State Office references the Fallon Paiute-Shoshone Tribe's bringing this case before the review committee. He asked whether there were verbal recommendations by the Nevada State Office to bring this issue to the review committee and why the Nevada State Office would recommend this action and then not attend the meeting. Mr. Slonim explained that he recalled some references to the review committee at the meetings between the Nevada State Office and the Fallon Paiute-Shoshone Tribe. He said that a section in the Nevada State Office's determination discusses the responsibility of the review committee and suggests that the Fallon Paiute-Shoshone Tribe bring the issue before the review committee if it has concerns about the determination.

Mr. Moyle said that in his review of the scientific evidence, there was not enough evidence to prove the Numic expansion theory. He explained that oral history tells that the Paiute people have been in the valley since their beginning and also shows the location of graves going back in time. Mr. George gave examples of the way Indians were treated by the government in the past with roll numbers and not being allowed in certain businesses. He added that the Spirit Cave human remains had nothing to do with a cave or a caveman; these human remains were buried in a burial ground.

Mr. Minthorn asked review committee members how they wanted to proceed with this issue. Mr. Bailey stated that the Fallon Paiute-Shoshone Tribe acted in good faith and followed procedure but have some legitimate concerns with the Nevada State Office, including that the Nevada State Office has not acted in good faith. Mr. O'Shea stated that he was prepared to make a decision about the consultation and procedural process at this time, but not on the factual issues regarding cultural affiliation. Ms. Worl explained her understanding that the regulations call for a demonstration of reasonably traced historical or prehistorical information between a present-day Indian tribe and an earlier group, and a determination based on a preponderance of the evidence presented in a case. Based on these requirements, Ms. Worl thought that review committee members could make a decision on this issue. She expressed her distress that the Nevada State Office chose not to attend the meeting and suggested that the review committee could work to strengthen the weakness in the law that allows for Federal agencies to ignore a Federal law.



Mr. Bradley said that the review committee is charged with making a decision within the context of the law. He suggested that the finding could be made in two parts: first, has the Nevada State Office consulted in good faith and followed its statutory responsibilities; and second, was the Nevada State Office's determination of culturally unidentifiable human remains consistent with the evidence. Mr. Bradley said that the issue of lineal descent and its very specific meaning was raised during the discussions of this issue but is not relevant in this case. He then reviewed portions of Subpart D, 10.14 of the regulations, which gives the criteria for determining cultural affiliation, and explained that he felt that the requirements have been met and the review committee could proceed with a determination. Mr. Minthorn agreed that review committee members could make a decision regarding the request. Mr. O'Shea expressed concern about the review committee's exercising its dispute resolution responsibilities when one of the parties does not attend the dispute proceedings. He suggested postponing a decision until the Nevada State Office could make a presentation to the review committee. Mr. Bailey asked what potential impact a decision by the review committee could have. Mr. Bradley pointed out that the review committee was strictly advisory. Ms. Mattix added that under Section 15 of the Act, Federal courts have jurisdiction over any person alleging a violation of the Act. If this issue were to go to court at a later date, the findings of the review committee could be used as evidence in such a case.

Mr. Bradley disagreed with Mr. O'Shea's suggestion to wait until the Nevada State Office can make a presentation to the review committee. He said that this issue has been before the review committee for four years. The Nevada State Office knew about the dispute hearing and chose not to attend. He then summarized the duties and responsibilities of the review committee, including reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony for the repatriation of such cultural items upon the request of any affected party. Ms. Worl said that she agreed with Mr. Bradley, and added that even if the review committee extended another invitation for the Nevada State Office to make a presentation, the review committee cannot compel attendance and the Nevada State Office might choose again not to attend. Review committee members reached consensus to make a decision regarding the request.

After discussion, review committee members, with the exception of Mr. O'Shea, agreed upon the following finding, "Upon reviewing the written record and the information presented at this meeting, the review committee does not believe the Nevada State Office has given fair and objective consideration and assessment of all available information and evidence in this case." Mr. O'Shea explained that in his opinion the Nevada State Office made a reasonable determination based on all the evidence presented but did not continue with the consultation process once it had made its initial determination. Mr. Minthorn stated that the Nevada State Office made its determination without adequate consultation, and that he considered this a failure because the Nevada State Office made a decision without including the other entities involved. Mr. O'Shea added that consultation does not necessarily result in agreement. He said that the Nevada State Office had obtained the entire set of tribal evidence before it made its determination. The agency is required by law to do a good faith evaluation of the evidence and make a determination. Mr. O'Shea concluded by saying that the Nevada State Office did not meet the requirement for continued consultation, which is important because a finding of culturally unidentifiable is not a permanent status.

For the second part of the finding, regarding whether cultural affiliation could be determined in this case, Mr. Bailey expressed concern about limiting the cultural affiliation to one Indian tribe and requested that the cultural affiliation be to a larger group. Mr. Bradley stated that in his opinion cultural affiliation could be determined in this case based on the connection shown by the scientific and traditional evidence. He added that the statute and the regulations allow for gaps in the record as long as a preponderance of the evidence could be shown. Ms. Worl agreed with Mr. Bradley and emphasized that the people of the Fallon Paiute-Shoshone Tribe demonstrate a sense of shared identity with the Spirit Cave human remains, a concept familiar to her as a Native person. Mr. Hart stated that based on a preponderance of the evidence, shared group identity and cultural affiliation have been established. Mr. O'Shea agreed that there has been a demonstration of a shared cultural relationship and a custodial or curatorial responsibility of the present-day inhabitants to the previous people, but stated that the evidence does not support a determination of cultural affiliation. Mr. Minthorn stated that cultural affiliation has been established between the Fallon Paiute-Shoshone Tribe and the Spirit Cave human remains. Review committee members discussed Mr. Bailey's suggestion to expand cultural affiliation to a larger group. After discussion, review committee members agreed with Mr. Hart's suggestion to respond specifically to the request presented by the Fallon Paiute-Shoshone Tribe. Mr. Moyle explained that both the Intertribal Council of Nevada and NCAI passed a resolution supporting this repatriation. With reassurance by Ms. Mattix that the finding was not exclusive to the Fallon Paiute-Shoshone Tribe, Mr. Bailey agreed to the finding. At Mr. Robbins' suggestion, the review committee agreed to make the finding specific to this repatriation.

The review committee, with the exception of Mr. O'Shea, agreed to the following finding, "In accordance with the review committee's responsibility to review and make determinations of cultural affiliation, the review committee believes that cultural affiliation can be determined between the Spirit Cave human remains and the Fallon Paiute-Shoshone Tribe for the purposes of this repatriation."

Mr. Bradley suggested wording for a recommendation of the review committee that the DFO communicate the review committee's findings on this dispute with the representatives of the two affected parties, the Nevada State Office and the Fallon Paiute-Shoshone Tribe, as well as other appropriate officials within the Department of the Interior. Mr. Robbins suggested that the appropriate process would be for the review committee to direct the DFO to prepare correspondence to the Secretary for signature by the chair transmitting its findings and recommendations. Ms. Mattix agreed and added that the Secretary could then determine how she will communicate those findings and recommendations and to whom. In response to a question by Mr. O'Shea, Mr. Robbins explained that the findings and recommendations are not automatically published in the Federal Register. Mr. Hart stated that the proposed wording was an action, not a recommendation. He was in favor of recommending repatriation of the Spirit Cave human remains and associated funerary objects to the Fallon Paiute-Shoshone Tribe. Ms. Worl agreed.

After discussion, review committee members agreed, with the exception of Mr. O'Shea, to the following recommendation, "The review committee recommends to the Secretary of the Interior that the Nevada State Office, Nevada State Office, repatriate the Spirit Cave human remains and associated funerary objects to the Fallon Paiute-Shoshone Tribe." Mr. Robbins stated that the National NAGPRA program would prepare the necessary correspondence for the chair's signature following the meeting. Ms. Worl suggested that language be included with the recommendation expressing compliance and consultation problems, such as those demonstrated in this case. She provided an example of open consultation in Alaska that resulted in good relationships and open dialogue between Federal agencies and Indian tribes. She also explained that in the part of Alaska from which she comes, native peoples are not adverse to scientific research, because they view it as a way for the ancestors to give them additional information. Ms. Worl suggested a time frame of 30 days for completion of the correspondence related to the dispute findings and recommendation.

## **Discussion of Federal Agency Compliance**

### Bureau of Indian Affairs (BIA)

*Ms. Carolyn McClellan*, Cherokee Nation, chief curator and NAGPRA coordinator, BIA, provided the review committee with an update on repatriation activities within BIA. BIA's mission includes a responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives. BIA is committed to complying with NAGPRA regarding museum property collections under its control. Although much work remains to be done, Ms. McClellan reported that BIA has made significant progress since she last reported to the review committee. BIA's NAGPRA-related collections were obtained through excavations on American Indian trust lands and reservations through permits issued by the Department of the Interior. BIA does not have a museum to house its collections and is therefore dependent on a number of Federal and nonfederal repositories. BIA has gone to considerable expense to identify repositories with BIA collections subject to NAGPRA. To date, 15 repositories have been identified as having NAGPRA materials under the control of BIA, with 4,185 sets of human remains and 272,839 other cultural items subject to NAGPRA. Of these, 3,890 sets of human remains are considered culturally unidentifiable until consultation can help determine cultural affiliation.

Since the FY2000 annual report was issued, and in conjunction with the repository housing the collection, BIA has issued has issued five notices of inventory completion and one notice of intent to repatriate. The notices of inventory completion cover 204 sets of human remains and 26,814 associated funerary objects. An additional notice of inventory completion was issued by a repository without acknowledging that BIA had control of the collection. That notice covered 1 set of human remains and 21 associated funerary objects, bringing the total covered by all notices to 205 sets of human remains and 26,835 funerary objects. Currently 10 notices are pending publication, covering 126 sets of human remains and 2,223 funerary objects. Ms. McClellan provided the review committee with a table detailing the status of BIA Federal Register notices. She described BIA's repatriation of Snake Town materials, which had been located at Arizona State Museum, Tucson, AZ, to the Gila River Indian Community. This transfer included 191 sets of human remains and over 26,000 associated funerary objects, and was the largest transfer to date of BIA collections. Ms. McClellan reported that the Field Museum, Chicago, IL, has not responded to numerous requests for the return of Snake Town materials, stating that it was prohibited from doing so by Illinois State law. BIA is pursuing this issue through its solicitor's office. Ms. McClellan has

prepared a briefing paper for the solicitor to aid in making a determination on the status of those collections.

BIA reached an agreement with the American Museum of Natural History, New York, NY, for that institution to complete NAGPRA inventories of BIA collections housed there by December 31, 2001. BIA has contracted with Nevada State Museum, Carson City, NV, to complete inventories of items inadvertently omitted from previous work, and the notice is currently awaiting Federal Register publication. The Museum of Northern Arizona, Flagstaff, AZ, has begun consultation for BIA collections in its possession. These collections included 574 sets of human remains, 889 associated funerary objects, and 33 unassociated funerary objects. The museum property program that oversees NAGPRA compliance for BIA's museum collections is constantly challenged by the limited resources provided for its mission. Ms. McClellan said that funding has not been specifically allocated for NAGPRA activities within BIA, but that approximately \$200,000 were spent to complete NAGPRA work.

Ms. McClellan informed the review committee that, on November 15, 2001, the Secretary of the Interior announced the establishment of the Bureau of Indian Trust Asset Management. All trust responsibilities from BIA will be moved to this new bureau. Senate confirmation of the person designated as Assistant Secretary is required. Ms. McClellan is uncertain of the impact the new bureau will have on her program. She is hopeful that the change will result in increased funding. Since her last report to the review committee, Ms. McClellan has added two staff members. Ms. McClellan supports the review committee's efforts in encouraging Federal agency compliance. While she is committed to doing the best she can with the resources available, Ms. McClellan stated she would appreciate any efforts by the review committee to help increase funding.

Ms. McClellan reported that in many Federal agencies, BIA included, the people active in NAGPRA are not receiving information about meetings and other NAGPRA information in a timely manner. The Federal Preservation Officer in each agency is not necessarily the correct contact, according to Ms. McClellan. Ms. McClellan monitors the Federal Register to get NAGPRA information but suggested that a letter of invitation to the appropriate representatives from Federal agencies would be more helpful to them in getting authorization to participate in these types of activities. Ms. McClellan said that there are a number of Federal agencies represented at the review committee meeting whose representatives will not be making presentations as they are currently in good standing regarding NAGPRA implementation. Ms. McClellan thanked the review committee for the opportunity to speak.

#### Review Committee Discussion

Ms. Worl thanked Ms. McClellan for her presentation and asked about the situation with the Field Museum. Ms. McClellan clarified that the Snake Town collection currently at the Field Museum is a BIA collection. In response to questions from Mr. Minthorn, Ms. McClellan explained that as additional BIA inventories are completed by the U.S. Army Corps of Engineers, BIA collection numbers would probably increase. She explained that at the current level of funding, BIA may not be in compliance with NAGPRA until after 2007. In response to a question from Mr. O'Shea, Ms. McClellan explained that BIA has contracted the U.S. Army Corps of Engineers to complete an assessment and inventory of BIA collections. This multiphase project is at the expense of BIA. Mr. Hart asked about the status of BIA collections in the database. Mr. Robbins explained that information is listed in the database under the institution or agency that has control of the collection, and that detailed database information is maintained only for culturally unidentifiable inventories. Ms. Worl asked for clarification of collections in Juneau, AK. Ms. McClellan explained that she hopes to undertake that project in April or May 2002. Ms. Metcalf asked whether BIA has collections on an international level. Ms. McClellan reported that BIA has Snake Town collections and Tohono O'odham items at the national anthropology museum in Mexico City.

Mr. Minthorn reiterated his concern about lack of Federal agency compliance. The review committee discussed the need to continue to maintain pressure on Federal agencies. Ms. Metcalf again raised the possibility of requesting an oversight hearing with the House Resources Committee for problems with Federal agency compliance. Ms. Worl recommended as an action item that the National NAGPRA program prepare a report on the past activities of Federal agencies to document instances of noncompliance or nonresponsiveness to review committee requests.

#### **Discussion of Reburial on Federal Lands**

Mr. Robbins explained that at the Kelseyville meeting the review committee requested more information on Federal agency policies for reburial. A disposition policy from the Nevada State Office regarding NAGPRA repatriated museum collections was included in the review committee binders. Mr. Bradley urged the other review committee members to

carefully read the BLM memo, and indicated he had found some points distressing. Mr. Bailey agreed. Mr. Minthorn emphasized that this is a major issue to which the review committee needs to return at a later meeting. Ms. Metcalf asked about NPS policies discussed at the Kelseyville meeting. Ms. Mattix explained that each bureau within the Department of the Interior makes its own policies. While reburial is permitted on NPS lands, BLM has established a different policy. Mr. Bailey inquired about the legal status of human remains reburied on BLM lands. Mr. Bradley said that since BLM prohibits the reburial of NAGPRA materials on public lands, it is a moot point. Mr. Hart stressed the importance of Indian tribes' finding secure burial places, although the issue is outside the scope of the review committee.

### **Repatriation Report, University of Nebraska-Lincoln**

*Ms. Priscilla Grew*, NAGPRA coordinator for the University of Nebraska in Lincoln, NE, reported on the recent repatriation that took place at the University of Nebraska on November 2, 2001. She thanked the review committee and the staff of NPS for helping make possible the repatriation of 821 individuals and 2,896 associated funerary objects to a coalition of 16 Native American tribes of the Great Plains. Ms. Grew said that the university was fortunate to be able to benefit from the leadership of the representatives of the tribal coalition and the assistance of the Nebraska Commission on Indian Affairs. Many of the representatives of the tribal coalition have extensive experience with NAGPRA and repatriation issues, and its partnership with the university greatly facilitated the successful return of the human remains and funerary objects to the Indian tribes. She also acknowledged the technical assistance that Mr. McKeown of the NPS had provided at the meetings in 1998 and during the notice publication process in 1998 to 2000. On December 10, 1998, in Santa Fe, NM, Ms. Grew and tribal representatives appeared before the review committee with a request for a recommendation for repatriation of culturally unidentifiable human remains in the university's collections.

Ms. Grew reported that to the best of its knowledge, the University of Nebraska-Lincoln was the first university in the U.S. to attempt to accomplish repatriation of an entire archeological collection of culturally unidentifiable human remains. This was accomplished in partnership with a large number of Indian tribes with historic and/or prehistoric presence in the State of Nebraska. Ms. Grew explained that a letter of invitation was sent in the summer of 1998, inviting approximately 30 Indian tribes to travel to the university at university expense to consult on NAGPRA. The first meeting resulted in a signed agreement in Lincoln on September 1, 1998 with representatives of 17 Great Plains Indian tribes. Since that time, 1 Indian tribe has withdrawn, resulting in a group of 16 Indian tribes referred to as the signatory Indian tribes. Ms. Grew said that this group has worked together since 1998 and has claimed all the previously culturally unidentifiable remains in the collection as of the 1995 Federal inventory. The 16 signatory Indian tribes are the Cheyenne River Sioux Tribe, Iowa Tribe of Oklahoma, Kickapoo Tribe in Kansas, Oglala Sioux Tribe, Omaha Tribe of Nebraska, Pawnee Nation of Oklahoma, Ponca Tribe of Nebraska, Ponca Tribe of Oklahoma, Rosebud Sioux Tribe, Santee Sioux Tribe, Winnebago Tribe of Nebraska, Yankton Sioux Tribe of South Dakota, and North Dakota Intertribal Reinterment Committee, including the Standing Rock Sioux Tribe, Spirit Lake Tribe, Three Affiliated Tribes of the Fort Berthold Reservation, and Turtle Mountain Band of Chippewa Indians of North Dakota.

Ms. Grew said that two draft Federal Register notices of inventory completion were submitted to NPS on September 30, 1998. One notice was for the group of culturally unidentifiable human remains that had been presented to the review committee at the December 1998 meeting; the second notice was for the group of culturally unidentifiable human remains whose status was changed to culturally affiliated with the assertion of shared group affiliation with the 16 signatory Indian tribes. The draft notices were returned to the university with comments in March 2000. Between March and October 2000, the university worked on revisions to the notices with the National NAGPRA program. The notices were published October 2, 2000. In April 2000, the president of the university wrote to the Nebraska Congressional delegation, with copies to the review committee, the Department of the Interior, and the National NAGPRA program, saying that the university very much agreed with the review committee that delays in processing repatriation notices in the Federal Register must be reduced, the NAGPRA program must be kept free of administrative conflicts of interest, and the Department of the Interior should expedite the rulemaking process for the disposition of culturally unidentifiable remains. On behalf of the university, Ms. Grew thanked the chair and members of the review committee and all who helped with the repatriation of the 821 individuals to the 16 Indian tribes of the Great Plains.

### **Review Committee Discussion**

In response to a question by Mr. Bailey, Ms. Grew explained that the Crow Creek Sioux Tribe withdrew from the signatory Indian tribes due to a change in administration. A subsequent invitation to rejoin the signatory tribal group

was declined. Mr. Bailey expressed his opinion that the university should have had a formal disclaimer from the Indian tribes who chose not to participate in the process. Ms. Grew explained that the 30-day waiting period following the Federal Register publication of notices was developed to preserve the rights of Indian tribes, and added that the university received no protests to the repatriation in the 30-day waiting period. Mr. Bailey emphasized the rights of Indian tribes to treat their ancestors as they wish and to have adequate information to form their positions. Mr. O'Shea emphasized the importance of having regulations for dealing with culturally unidentifiable human remains for the public's use and guidance. He explained that the original request by the University of Nebraska might not have met the standard that the review committee applied in the Chaco Canyon case. This standard included evaluation on a site-by-site basis and the idea that cultural association to place is different from cultural affiliation. Mr. O'Shea continued that the University of Nebraska case seems to be very similar to regional solutions envisioned by the review committee regarding culturally unidentifiable human remains when it is not possible to meet the higher standard of cultural affiliation. This approach would address Mr. Bailey's concerns regarding many potential descendants deriving from a single ancestor. Mr. Minthorn emphasized the importance of following a process where determinations are made by Federal agencies, museums, and universities in consultation with Indian tribes. Mr. Minthorn commended the University of Nebraska for its efforts regarding this repatriation and expressed the hope that other Indian tribes and institutions could learn from this repatriation. Mr. Hart expressed his appreciation for the repatriation report.

### **NAGPRA Implementation in the Northeastern U.S.**

#### Aroostook Band of Micmac/Wabanaki Tribes of Maine

*Ms. Donna Augustine*, NAGPRA representative for the Aroostook Band of Micmacs with the Wabanaki Tribes of Maine, introduced herself as Thunderbird Tribal Woman. She explained that she has been working at the forefront of reburials, a spiritual responsibility given to her by her ancestors. Ms. Augustine attended one of the first NAGPRA review committee meetings in Washington, DC. She stressed the difficulty of having to listen to discussions where ancestors were called specimens in labs and of not being allowed to speak until the public comment period at the end of the three-day meeting. Since that time, she has noted a greater respect and better appreciation on both sides. Ms. Augustine explained that historically the Abenaki group was part of the Wabanaki Confederacy, comprised of the Micmac, Maliseet, Passamaquoddy, Penobscot, and Abenaki tribes. While the Abenaki are not federally recognized, the Wabanaki Tribes of Maine recognizes them as part of its group and assists the Abenaki in repatriation efforts. She expressed verbal support for the Abenaki's repatriation request before the review committee.

Ms. Augustine described her efforts to repatriate human remains held at the Peabody Museum of Archaeology and Ethnology, Harvard University. She initially became aware of the human remains while at a meeting at the Maine State Museum and made a commitment on February 28, 1994, to bring them home. The human remains were from the Nevins site in Blue Hill, ME. Ms. Augustine explained that the ancestors came to her to let her know that the human remains were there. The human remains are approximately 6,500 years old. Ms. Augustine promised those human remains that she never would stop trying to get them back. She is aware of the review committee's responsibility and need to follow the law, but she reminded them that Native Americans have a spiritual responsibility and connection to their ancestors. She expressed fear that she will make mistakes that will result in the ancestors' being held in museums forever.

Ms. Augustine stated her confusion at a civilized nation that has laws to make decisions about ancestors who were here long before the Europeans landed on the shores. These laws require Native Americans to prove that they are connected to their ancestors or they cannot be returned. Ms. Augustine said that there is no similar law for non-Native people. The Wabanaki repatriation team is united because of their shared group identity and to prevent delays in the repatriation process. Ms. Augustine explained that this topic is beyond politics and manmade law. As a reminder for the intent of this law, Ms. Augustine stated that she believes that the U.S. finally realized that a major injustice was done to Native American people as a whole by digging up their dead, putting them in museums, and studying them. The way the ancestors speak spiritually, they want to come home and be set free. She expressed support for any Indian tribe requesting its ancestors. Ms. Augustine stated on behalf of the Wabanaki Tribes of Maine that if any human remains are left in museums that no one requests, they will be willing to repatriate and rebury those ancestors. She explained that her message today was to remind people of their spiritual responsibility and that the paperwork will not follow them into the next world. She will pray for the review committee to make the right decisions for the ancestors. She offered to sing a song at the end of the day.

### Wampanoag Confederation

**Ms. Ramona Peters**, Wampanoag Confederation, welcomed everyone to the Massachusetts area. She explained that she coordinates repatriation matters for the Wampanoag Tribe of Gay Head, from the island of Martha's Vineyard, and the Mashpee Tribe of Wampanoag from Cape Cod. Ms. Peters followed formal protocol and welcomed Native people that have not been in the area before to her territory and welcomed back those who are returning. Ms. Peters spoke to the review committee about the right of Indian tribes to form confederations. She explained the history of the Wampanoag people who became Christianized, and of their 14 villages, called praying towns. Only two of the praying towns survived King Philip's War. Ms. Peters described the Massachusetts State flag, which signifies oppression of Indian people. Following the war and until 1870, Mashpee and Aquinnah were reservations, but also petitioned the State of Massachusetts for the right to become Indian towns without an Indian agent or overseer. Both were successful in becoming Indian townships and were independent until 1975, when land was lost due to taxes and was subsequently developed. Gay Head sought Federal recognition and Mashpee is now in that process.

Confederations were formed to aid in joint participation for different issues, including NAGPRA. One confederation was formed in 1995 to participate in the repatriation process and rebury ancestors, and has been successful in participating within the Federal law. Ms. Peters explained that for the past month and a half the confederation has been trying to repatriate ancestors originally from the island of Nantucket, currently at the Peabody Museum of Archaeology and Ethnology, and at the University of Massachusetts. All of the Wampanoag people from Nantucket are gone. The Town of Nantucket has provided a protected site for reburial. The notices of inventory completion have been returned from the National NAGPRA program because the human remains cannot be culturally affiliated to the confederation, even though the members of the confederation include federally recognized Indian tribes. Ms. Peters stated that this issue is about Indian tribes' being allowed to govern themselves and how they choose to be identified. Requesting each individual group to claim the same sets of human remains would create extra work and would delay the process. Ms. Peters added that Cape Cod National Seashore has been very helpful in providing protectable space for reinterments.

### Review Committee Discussion

In response to a question by Mr. O'Shea, Ms. Peters explained that the human remains are not culturally unidentifiable but have been culturally affiliated to the Wampanoag Confederation by the museums. This is the same process that has been followed for seven years. Mr. Robbins explained that in the past there have been notices published where both the cultural affiliation and the repatriation were to associations or groups of Indian tribes, such as the Wampanoag Confederation. In response to questions received by the office, an effort was made to clarify cultural affiliation and repatriation. Currently, cultural items must be affiliated to a federally recognized Indian tribe or tribes. Cultural items are repatriated to the culturally affiliated tribe or tribes, or, in certain circumstances, to groups or associations. At Mr. Bradley's request, Mr. Robbins agreed to meet with Ms. Peters and the National NAGPRA staff to try to work out the technical issues of publishing notices. Mr. O'Shea clarified that in some instances the federally recognized Indian tribe technically is receiving the repatriation and then delegating the authority to the organization or confederacy.

## **Contamination of Cultural Items**

### Review Committee Discussion

Mr. Hart suggested that Indian tribes might be encouraged to develop memorandums of agreement to leave contaminated items with museums until they can be decontaminated or other disposition arrangements can be made, and that such a strategy might be more effective than encouraging additional appropriations from Congress. Mr. Bailey added that the review committee could recommend to Congress that this be a requirement of museums. Ms. Mattix clarified that the only requirement in the regulations currently is that museums disclose potential hazards. Mr. Bradley stated that different Indian tribes and different institutions have different interests and abilities. He stated that consultations in good faith will result in the right solution.

The review committee had contamination reports from the following Indian tribes and organizations: Hopi Tribe; Denver Museum of Natural History; Society for the Preservation of Natural History Collections, National Museum of the American Indian, Smithsonian Institution, and NPS; and San Francisco State University. Mr. Bailey summarized the contamination report from the Hopi Tribe, adding that the most interesting aspect of the report to him was the inability to predict whether objects would be contaminated or not. Testing was done in cooperation with the Arizona Poison Control Center. Of the 23 Hopi Katsina Friends tested, 20 had arsenic levels below the limit of detection and 3 tested positive for arsenic, some at high levels. The report contains recommendations, but stresses that it is difficult to predict contamination. Ms. Metcalf asked

about current measures to educate the public. Mr. Robbins explained that the regulations require disclosure of potential hazards, which could be done during the consultation process. Other possibilities include the dissemination of information resulting from NPS NAGPRA grants on the Internet. Mr. Robbins reported that Mr. Leigh Kuwanwisiwma, Hopi Tribe, has stated that he is available to discuss the results of the contamination project. Mr. Bailey stressed the danger of repatriating contaminated objects because many of the objects being repatriated will be used. Mr. Bailey asked whether any representatives were present from any of the institutions submitting contamination reports.

#### Public Participation

**Ms. Stephanie Makseyn-Kelley**, National Museum of the American Indian, Smithsonian Institution, explained that in the past couple of years the National Museum of the American Indian received requests for the repatriation of objects that were suspected to have been treated with toxic pesticides. These were sacred objects that were intended for use. She described the process when a multicomponent bundle was requested by an Indian tribe specifically for ceremonial use. Most of the bundle is in good condition but one component was completely destroyed by insects. The remaining components were assumed to have been treated. The Indian tribe chose to have the bundle tested, which was done with nondestructive testing methods utilizing swab tests and a filtration device. The findings were discussed with the Indian tribe. Ms. Makseyn-Kelley added that full disclosure of potential hazards is done and each affected Indian tribe is given the choice of testing. In response to a question by Mr. Bailey, Ms. Makseyn-Kelley agreed that museum records alone are not always indicative of the amount of contamination. Despite careful consideration of the documentation, she said that objects at the museum are assumed to have some treatment. Even objects that were never treated could have cross contamination if stored next to treated objects.

Ms. Makseyn-Kelley explained that there are currently no standards as to what level of contaminant will cause reactions in a person handling the object. Currently museums can offer safe handling techniques that are reasonable, such as washing the face and hands with hot, soapy water, storing objects outside of the living area, and not enclosing objects. In the event of major contamination, which the museum has not encountered to date, Ms. Makseyn-Kelley explained that it would ask the Indian tribe what actions it would like to take. Possible actions could include vacuuming the object with a HEPA vacuum device, exposing it to outside air, or washing or rinsing. In response to a question by Mr. Minthorn, Ms. Makseyn-Kelley explained that she was not aware of any destructive tests performed by the museum. Many pesticides sublime over time, turning from the solid state to the gaseous state. Items that are wrapped release vapors when opened, which can be detected by a tiny vacuum nozzle inserted between layers to gather small amounts of air. Another test is a moistened swab that is pressed upon the surface of an object. Mr. Minthorn asked whether the museum had any written policy regarding contaminated objects, and cited the importance of a guiding process for museums, universities, and Federal agencies. Ms. Makseyn-Kelley explained that the museum would be submitting a statement about pesticide testing and disclosure to the updated edition of the publication *Mending the Circle*.

Mr. Bailey pointed out the possibility that contaminated objects could inadvertently be returned to Indian tribes. Mr. Minthorn asked whether all museums, universities, and Federal agencies are aware of the regulations dealing with contamination. Mr. Bradley stated that this is a difficult problem and there are two possible solutions: broad dissemination of information; and development of inexpensive, reliable, noninvasive testing techniques. Mr. O'Shea pointed out the increased awareness and concern of museum staff, and suggested that more progress could be made if this problem were treated as a partnership between museums and Native people.

Mr. Bailey raised the possibility of different levels of contamination on one object. He also pointed out some areas of consideration raised in the Hopi Tribe's contamination report. These included standard testing before the return of objects, identifying the party responsible for decontamination, and the future of objects that cannot be decontaminated. Ms. Makseyn-Kelley explained that the National Museum of the American Indian tests objects in multiple places to ensure accurate results. She added that for objects that cannot be decontaminated, museums could work with Indian tribes to find a way to preserve the spiritual life of the object. Mr. Minthorn asked how the National NAGPRA program was educating museums, universities, and Federal agencies on the contamination issue. Mr. Robbins explained the National NAGPRA program's initial response of supporting efforts through the grants program to develop information to educate the public. Mr. Bradley pointed out that the increased National NAGPRA staff would allow the program to address some of these issues and allow for further dissemination of information. Mr. Bradley requested an update of the program's work on this topic at the next meeting.

Mr. O'Shea asked about commercially available test kits. Ms. Makseyn-Kelley explained that the National Museum of the American Indian uses supplies present in its lab, and added that the industry should respond quickly to the need for this type

of test. Mr. O'Shea explained that the Denver Museum of Natural History report discusses the use of a commercial indicator test for arsenic. Mr. Bailey pointed out the need for testing standards. Mr. Robbins explained that the National Institute for Occupational Safety and Health (NIOSH) would need to set the standards, which would be regulated through the Occupational Safety and Health Administration (OSHA).

**Mr. Chuck Smythe**, NPS, Northeast Region, stated that this issue is very difficult and beyond the ability of any single museum. He described a research project at the Burke Museum at the University of Washington, in which organic materials were treated with known concentrations of substances and then tested to see if specific levels could be determined. Mr. Smythe explained that test accuracy is extremely important in detecting contamination. Another project involved material repatriated by the Haudenosaunee Standing Committee on Repatriation. This project involved wiping contaminated objects with water, which resulted in drawing out the contamination from inside the object at a higher degree than existed previously. The conclusion was that sometimes treatment can make the contamination problem worse. Mr. Smythe agreed with Mr. O'Shea that a national level effort between Native people and museum people, perhaps as a task force, is needed to deal with the many complex problems of this issue. He listed several of these problems, including how to test, what to test for, what levels to try to detect, and what levels are dangerous to human health. Mr. Smythe suggested developing a Website clearinghouse that would provide information on the different contamination efforts.

Mr. Minthorn agreed with Mr. Smythe and stressed the need to make information available to the public soon. Mr. Bailey raised the issue of objects that were repatriated before contamination became a well known issue, and stated that information dissemination should be a priority due to the serious health consequences. Mr. Minthorn asked whether contamination is included in the report to Congress. Mr. Bailey explained that he would update the information that he drafted for the report to Congress to reflect the views of the review committee on this issue. Mr. Hart encouraged Indian tribes to consider retiring sacred objects that are heavily contaminated and provided an example of how the Cheyenne had to retire objects and replicate them for ceremonial use.

**Ms. Melissa Wagner**, repatriation coordinator for the University of Pennsylvania Museum of Archeology and Anthropology, stated that Fisher Scientific has a commercially available test kit produced by Merck. The kit is approximately \$80 for 100 test strips. These soil sample tests have been modified to test objects. She added that NPS has published information about this issue in some of its Conserve O Grams. The Society for the Preservation of Natural History Collections annual meeting in Montreal in May is devoted to the contamination of collections. All chemicals have a Material Safety Data Sheet (MSDS) that provide information on how to handle these contaminants. The Burke Museum also has information and guidelines prepared for those who ask about potentially contaminated collections.

**Ms. Pilar Montalvo**, repatriation coordinator for the American Indian Ritual Object Repatriation Foundation, explained that they are currently working on the second edition of the publication, *Mending the Circle*, which will include a section on pesticides. Ms. Alyce Sadongei and Ms. Nancy Odegaard, Arizona State Museum, will submit a chapter, and Mr. Jim Pepper Henry, National Museum of the American Indian, Smithsonian Institution, will submit information. If fundraising allows, the book will be sent free of charge to all federally recognized Indian tribes.

### **Disposition of Culturally Unidentifiable Remains**

**Ms. Donna Roberts-Moody**, repatriation and site protection coordinator for the Abenaki Nation, thanked the Wampanoag Nation for allowing her to speak. She explained that she will be taking home 30 ancestors from the Peabody Museum of Archaeology and Ethnology, and thanked Ms. Ruby Watson, Ms. Barbara Isaac, and Ms. Patricia Capone for their hard work. The Abenaki Nation is before the review committee seeking to addend five sets of human remains from the New Hampshire 38-4 Smythe site to a previous request granted by the review committee at the May 1999 meeting in Silver Springs, MA.

**Mr. Robert Goodby**, assistant professor of anthropology at Franklin Pierce College, Rindge, NH, described the history of New Hampshire 38-4 Smythe Site, located on the east bank of the Merrimack River at Amoskeag Falls, NH. The site has very uneven documentation. Archeological research at the site determined that there were artifacts dating as far back as the Paleo-Indian period, some 11,000 years before present. There were two fluted points found from the site. Mr. Goodby said that there were also extensive quantities of artifacts from the Archaic and Woodland periods with, in particular, the Middle Archaic and Middle Woodland periods very well represented. A number of burials were excavated at the site, none of which have been described in any great detail, according to Mr. Goodby. A 1981 publication in the *New Hampshire*



Archeologist mentions eight individual burials found during the Franklin Pierce College excavations and one burial found by the New Hampshire Archeological Society. The more extensive 1980 report submitted to the State Historic Preservation Office has one paragraph on the material at the site, which has been provided to the review committee. Mr. Goodby said that the report describes eight Indian skeletons estimated to be 600 years old: four males, two females, one infant, and one whose bones were so fragmented that sex could not be determined. Further analysis showed that most of the individuals had died between 20 and 30 years of age. Mr. Goodby reported that to his knowledge, since 1968 the human remains have been at the laboratory where they continue to reside. In 1999, Mr. Gary Hume, State archeologist for New Hampshire, submitted a request to the review committee for repatriation of two sets of the human remains, which was approved. Franklin Pierce College would like to include the five additional sets of human remains with the original two sets approved in 1999 for repatriation to the Abenaki Nation of Missisquoi. Ms. Roberts-Moody explained that the Federal Register notice for these five sets of human remains is the last requirement that must be met before the remains can be repatriated. Review committee members have a copy of the notice.

#### Review Committee Discussion

In response to a question by Mr. Bailey about whether there would be other tribes that might be able to submit competing claims for the remains, Ms. Roberts-Moody explained that the Abenaki Nation is a nonfederally recognized nation of indigenous people, created where they live today. The nation is comprised, as it was historically, of small family groups. Its communities include the Abenaki Nation of New Hampshire, Pennacook Cowasuck Abenaki, and Abenaki Nation of Missisquoi. Ms. Roberts-Moody explained that she is certified to represent all Abenaki groups. There is no competing claim and all Abenaki groups are in consensus. Mr. John Moody reminded the review committee of statements of support by representatives of the Wampanoag Confederation and the Confederated Wabanaki Tribes of Maine. In response to a question by Mr. Minthorn, Ms. Roberts-Moody explained that the notice of inventory completion for the two previously approved sets of human remains has been published yet. The New Hampshire Division of Historical Resources is currently curating the two sets of human remains. The five sets of human remains requested by the Abenaki are curated at the Franklin Pierce College, and one set is missing.

Mr. Bradley welcomed his neighbors and friends. He explained that this case was an example of the difficulty in reassembling the archeological record that sometimes occurs in New England. Several review committee members were on the committee when the initial request was heard. Mr. Bradley explained that he had two issues, which had been addressed for the most part. The first question was whether the appropriate federally recognized Indian tribes had been consulted and concurred. He said that, as Ms. Roberts-Moody pointed out, the Confederated Tribes of Maine and the Wampanoag Confederation have agreed on paper and orally at the meeting. The second question was about the institutional requirement to provide information listed in the regulations under Section 10.9, Inventories, paragraph (c), Required information, items (1) through (4). Mr. Bradley stated that once that information was submitted, there would be no reason that the repatriation could not go forward. Mr. Goodby pointed out that the information required was substantially more than present in the original request. Mr. O'Shea agreed with Mr. Bradley that in every instance where there has been a special recommendation to repatriate culturally unidentifiable human remains, baseline information has been required. This condition also has been an element in the letter that the institutions receive from the National NAGPRA program, that documentation will exist and be part of the public record. Mr. O'Shea agreed that once the documentation is complete, the five sets of human remains could be included with the earlier approved request. Mr. Bailey referred to a missing burial and asked Mr. Goodby whether the missing burial was mixed with the human remains at Franklin Pierce College. Mr. Goodby agreed to this possibility. Mr. Robbins offered the assistance of the National NAGPRA program to help determine the kind of information necessary for the Federal Register notice.

Mr. Bradley recommended that the review committee approve the request for repatriation of culturally unidentifiable human remains. He added that the issue of the amount of information submitted as documentation is the responsibility of the institution and its view of what constitutes compliance with the law. Mr. Robbins asked whether the review committee would require the same written concurrence from the Wampanoag Confederation and the Confederated Wabanaki Tribes of Maine as it had for the initial request. Mr. Bradley stated that he felt the oral support expressed at the meeting from representatives of both groups was sufficient. Mr. Minthorn cited the letter of support containing six signatures from the initial request. Mr. O'Shea expressed concern about shortcutting the procedure that the review committee has developed for handling culturally unidentifiable human remains. The review committee might consider the original letter sufficient coverage for this request, but to accept verbal agreement over an official document might be a mistake. Mr. Bradley agreed, and stated he was considering the letter with the support of the two authorized representatives. Ms. Mattix advised the review committee to keep the record clear. The letter in the initial request covered 17 sets of human remains. The addendum is for the additional five sets of human remains. Ms. Mattix suggested that the review committee might want to

request an additional letter to clarify the situation. Mr. O'Shea suggested that the review committee follow the process used in the past and make the recommendation contingent on completion of an updated approval letter.

A majority of the review committee members agreed to approve the addition of five sets of culturally unidentifiable human remains, pending final receipt of letters of agreement from the affected Indian tribes and the completion of the documentation of the materials. Ms. Worl abstained from voting, explaining that she had not been involved with the original determination, and had not had an opportunity to review the original material. She recommended that for future cases, review committee members be provided all relevant background information. Ms. Roberts-Moody explained that it took one year to get all signatures on the original approval letter. She expressed concern that reburial of the original two sets of human remains will be delayed further and she feels the weight personally if her actions cause further delay. Mr. Minthorn reassured her that she has not failed. He pointed out that legal constraints have to be followed. He added that others will learn from this experience, and the efforts of Indian people, museums, and institutions will create a memory.

### **Meeting Protocol**

Mr. Robbins explained that the meeting protocol is the public's guidance on the Web for what to expect at a meeting. The National NAGPRA program has received questions on several aspects of the meeting protocol: first, that presenters are to be certified that the individual represents an Indian tribe, Native Hawaiian organization, Federal agency or museum; and second, that requests must include a summary of intended comments that will be evaluated to determine the relevance to the review committee's business. Mr. Robbins explained that the review committee might want to discuss these issues and determine what requirements are appropriate and practical. Mr. O'Shea explained that the meeting protocol was developed by the review committee, and initially drafted by Ms. Metcalf, to help keep the meetings manageable and civil. He added that he has received questions about the certification requirement. Mr. O'Shea suggested that the certification requirement should be eliminated, but the meeting protocol could make a distinction between formal presentations and public comment. Mr. Minthorn agreed with Mr. O'Shea. Ms. Metcalf explained that the requirement for certification had been intended to clarify whether a person was really representing an Indian tribe. Mr. Bailey suggested adding the word "formal." Ms. Worl suggested that the DFO rewrite the meeting protocol to distinguish between formal presentation and public comment. She outlined that formal presentations would require giving the review committee advance notice of the presentation and relevant materials, and include a statement to the effect that they are representing a tribe and their tribal position. Individuals could speak during the public comment portion, not necessarily representing a tribe. Mr. Hart asked for wording that would enable the chair to control personal attacks, as experienced by the review committee in Norman, OK. Ms. Worl agreed and suggested wording that the chair shall have the discretion to ensure that comments are appropriate and relevant.

### **Dispute Procedures**

Mr. Robbins had three suggestions for clarifying the dispute procedures. First, move the information requirements from after a dispute is accepted for consideration to the paragraph that describes the initial request from the requesting party. Second, the regulations provide for formal and informal resolution; since the dispute resolution procedures could be read for formal resolution, there is currently no document that addresses informal resolution. Third, currently the dispute resolution procedures state that the review committee may issue a finding rather than a recommendation. Ms. Mattix clarified that in the regulations, formal resolutions refer to judicial actions and informal resolutions include disputes heard by the review committee. Mr. Robbins explained that the remaining two suggested changes are detailed in a revised version of the dispute resolution procedures in review committee members' binders. The review committee agreed to the proposed changes. Ms. Worl requested an additional requirement for information initially provided under section III.A.1 of the procedures, to require a summary of the consultation record. The review committee agreed to change the wording to allow for a finding and/or recommendation following a dispute. Mr. Hart suggested adding wording that all contact by the parties with the review committee would be at review committee meetings. Ms. Worl requested that the document be gender neutral.

### **FACA Final Rule**

Mr. Robbins explained that on July 19, 2001, the final rule governing Federal Advisory Committee Management was published in the Federal Register (July 19, 2001, vol. 66, no. 139, pp. 37728-37750 OR 41 CFR Parts 101-6 and 102-3). A copy of this document was included in review committee members' binders. Mr. Robbins reviewed the new rule, explaining

that the review committee was in compliance with most sections of the rule. He pointed out that the rule requires publishing notices for the meeting at least 15 calendar days prior to the meeting, while the review committee's meeting protocol requires 90-day advance publication. The one area where the rule requires a change in the review committee's current process is on page 37746, regarding how advisory committee meetings are documented. The final rule requires that the DFO ensures that meeting minutes are certified within 90 calendar days. Currently the review committee approves the minutes at the following meeting. Ms. Worl recommended that the draft minutes be distributed to review committee members 45 days after the meeting. Review committee members could submit any amendments, corrections, or deletions within a 14-day period. If substantial changes are noted, the process could be repeated. The chair would sign the certified minutes as approved by the review committee within the 90-day requirement. Mr. O'Shea asked Ms. Hagel about the typical time requirement. Ms. Hagel reported that the minutes are typically prepared within 10 to 11 weeks of the meeting, but she would make every effort to finalize the minutes within the 45-day requirement.

### **Nomination Process**

Mr. Hart's term on the review committee expired in September 2001. Mr. Robbins explained that he prepared a letter to the Assistant Secretary for Fish and Wildlife and Parks explaining the expiration of Mr. Hart's term and asking whether the department's decision would be to proceed with a nomination process or to directly reappoint Mr. Hart. Mr. Robbins explained that he has had no response, but would continue to pursue this issue.

### **Upcoming Meetings**

The spring 2002 review committee meeting will be held May 31, June 1 and 2, 2002, in Tulsa, OK, at the invitation of the University of Tulsa. The review committee agreed to tentatively set the fall 2002 meeting for Seattle, WA, in November or December 2002. Mr. Frederick York, anthropologist, NPS, Seattle, WA, offered to assist the National NAGPRA program in coordinating meeting logistics.

### **1999/2000 and 2001 Report to Congress**

Mr. O'Shea stated that the report is in progress.

### **Introduction - Robert Stearns**

At the invitation of Mr. Bradley, Mr. Stearns introduced himself and provided background information for the review committee. Mr. Stearns has worked for the Federal Government for 15 years, as well as the University of Alaska-Fairbanks and the University of New Mexico. His professional work has involved Indian projects and Indian communities. Mr. Stearns explained that his mother is an Alaskan Native from the Village of Afognak who worked as an Alaskan Native educator and his father worked for the BLM. Mr. Stearns expressed appreciation for observing the review committee meeting and a commitment to working with the excellent National NAGPRA staff to build a strong team. He plans to work inclusively with Indian communities, museums, and professional organizations on NAGPRA issues.

Mr. Bradley stated that he looked forward to working with Mr. Stearns, and expressed his appreciation for the efforts of Mr. Robbins. Mr. Robbins stated that he has enjoyed working with the review committee, the NAGPRA community, and National NAGPRA staff.

### **Public Comment**

*Ms. Donna Augustine*, Wabanaki Tribe, stated that her spirit name is Thunderbird Turtle Woman. She explained that there is an unwritten law, established long before the white man landed on the shores, not to disturb the dead. She said that the Spirit Cave ancestor wants to come home and be reburied in the ground. Too much importance is being placed on paperwork, which is not really Indian law. Indian law is the pipe, tobacco, and the spirit of the

wind, the trees, and water. Ms. Augustine expressed support for the Fallon Paiute-Shoshone Tribe in its repatriation efforts for the Spirit Cave human remains.

**Ms. Patricia Capone**, Peabody Museum of Archaeology and Ethnology, Harvard University, thanked the review committee for the opportunity to speak and thanked Harvard Law School for hosting the meeting. She provided the review committee with an update on the Peabody Museum's repatriation efforts. Since the Kelseyville review committee meeting in June 2001, the Peabody Museum has had over 250 communications related to NAGPRA, including ongoing consultations on cultural affiliation and Federal Register notices, work on physical repatriations resulting from the notices, and continuing discussions with Federal agencies regarding control of collections under the Peabody Museum's care. The Peabody Museum has hosted three consultation visits, two of which were under NPS NAGPRA consultation grants. Since June 2001, 18 Federal Register notices have been published, accounting for an MNI of 405 human remains, 6,149 associated funerary objects, and one object of cultural patrimony. Since June 2001, two sets of human remains, three associated funerary objects, and one object of cultural patrimony have been repatriated. Currently, the Peabody Museum has under its care 3,136 culturally affiliated human remains, 2,656 of which have been included in notices of inventory completion published in the Federal Register. Ms. Capone had calculated that this represented 11 percent of the approximately 24,000 sets of human remains across the U.S. for which notices of inventory completion have been published to date. She said that the museum has had 94 notices published, and that this is 12 percent of the 781 published notices from across the U.S. Of the 9,388 culturally affiliated associated funerary objects, 3,378 have been published in the Federal Register and 147 have been physically repatriated. Of the 4,448 unassociated funerary objects, 3,453 have been published in the Federal Register and 32 have been repatriated. Finally, 1 sacred object, 55 objects of cultural patrimony, and 18 objects considered both sacred objects and objects of cultural patrimony have been published and repatriated.

Ms. Capone explained the current staff situation. Until June 2001, approximately 25 staff members were devoted to meeting the inventory deadlines during the forbearance period. With the completion of the inventories, NAGPRA activity has become part of the museum's broad focus with most staff involved with NAGPRA in some way. Ms. Capone introduced Ms. Diana Loren and explained that Ms. Capone and Ms. Loren are the primary staff involved with NAGPRA issues. Approximately eight staff members are completing a general inventory of the entire collection at the Peabody Museum, inspired by the NAGPRA inventory project. Ms. Capone added that this general inventory may provide additional collections relevant to NAGPRA, necessitating additional inventories. She described efforts at co-curation, which are being initiated with various groups who have decided not to physically repatriate items.

Ms. Capone welcomed everyone to celebrate the raising of a new totem pole on November 19, 2001, to replace a totem pole repatriated to the Cape Fox Corporation in the summer of 2001. Ms. Worl offered to share a sample memorandum of agreement dealing with co-curation. Ms. Metcalf suggested contacting the University of Alaska, Fairbanks for additional co-curation ideas. Mr. Bradley added that the Robert S. Peabody Museum, Andover, MA, also has some useful curation models.

**Ms. Rochanne Downs**, Fallon Paiute-Shoshone Tribe, expressed a strong belief that ancestors that have been taken from their burial sites are being pulled back from the paradise of the spirit world. The Spirit Cave human remains are being punished for being old. She added that she hoped that review committee members and others would be protected from that fate. Traditional stories have taught that her people have been in the same area since the beginning of time. She has been taught not to go to the caves where the ancestors rest so that they are not disturbed, and to go there is to risk ghost sickness. She stated that all Indian people are one people.

**Ms. Myra Giesen**, Bureau of Reclamation, clarified that the Bureau of Reclamation was not a part of the dispute between the Fallon Paiute-Shoshone Tribe and BLM, although mentioned in the dispute proceedings.

**Ms. Martha Graham**, director of the cultural resources office, American Museum of Natural History, New York, NY, explained that she was leaving AMNH to join the National NAGPRA program, and introduced members of the museum's cultural resources office staff: Ms. Tracy Carrier, inventories; Ms. Elaine Guthrie, acting director; Mr. Russell Leighty, inventories; and Ms. Nell Murphy, coordinator.

**Mr. Brent Hicks**, Confederated Tribes of the Colville Reservation, explained that he was making this presentation on behalf of Adeline Fredin, the Tribal Historical Preservation Officer for the Confederated Tribes of the Colville

Reservation. Mr. Hicks described a letter from the Smithsonian Institution to Judge Jelderks, the judge presiding over the Kennewick case in Oregon District Court. The letter asked Judge Jelderks to select the Smithsonian Institution as the permanent repository of the Kennewick human remains and to conduct further study of the human remains should Judge Jelderks decide that the human remains are not eligible for repatriation or further study is necessary. Mr. Hicks said that several statements in the letter suggest a larger purpose regarding the future implementation of NAGPRA. First, the Smithsonian Institution, as part of the Federal government, interfered with the Indian tribes' rights to represent their interests. Claims that the Smithsonian Institution is the repository for materials found on Federal lands and has the most qualified experts in the country for determining cultural affiliation are untrue, said Mr. Hicks, adding that they undermine the Indian tribes' rights to provide professional experts and oral history evidence. The second point made by Mr. Hicks was that the Smithsonian Institution claimed in writing early in the case that it did not have a role in the suit and the plaintiffs who were Smithsonian employees were acting as individuals. This was done to avoid conflict of interest with the U.S. Government's position in this case. According to Mr. Hicks, by writing this letter, the Smithsonian Institution has taken a position and requested a very specific role in the case and has done so using Government resources. The position the Smithsonian Institution is now taking is in conflict with and undermines the Government's position that affiliation already has been appropriately determined and the human remains should be repatriated. The Smithsonian Institution is asking Judge Jelderks to bypass the NAGPRA decision-making process and Archeological Resource Protection Act (ARPA) permit process and replace them with court determinations, which would prevent tribal participation in the process. Mr. Hicks concluded by saying that it is appropriate for the review committee, the National NAGPRA program, and the Department of the Interior to weigh in on this as the Smithsonian Institution is asking to remove Federal agencies as decision makers regarding determinations of cultural affiliation.

Mr. Hicks then proposed that the National NAGPRA program hold regional workshops with Indian tribes regarding the implementation of NAGPRA. The meetings could educate Indian tribes on the current implementation of NAGPRA and their rights and responsibilities under NAGPRA, as well as the implications of the Kennewick man case. One of the hardest lessons learned by Indian tribes in that case, Mr. Hicks said, was the realization that oral history and Indian self-knowledge and self-identity are not enough. He said that Indian tribes need to know where to find sources of information, how to track down collections, how to develop action plans for repatriation that are specific to their interests, and how to develop cultural affiliation documentation that will withstand the scrutiny of those who do not support tribal interests. Mr. Hicks also raised a concern regarding the U.S. Army Corps of Engineers. The Confederated Tribes of the Colville Reservation has been working with the U.S. Army Corps of Engineers for many years on collection issues. Following the passage of NAGPRA, the U.S. Army Corps of Engineers conducted thorough item-by-item inventories of collections that resulted in the identification of misidentified objects. In 1999, the St. Louis District of the U.S. Army Corps of Engineers directed the local district to identify NAGPRA items only from collections records. Mr. Hicks said that this raises the concern that repatriations of NAGPRA items under the new inventory requirements might not include all human remains or associated funerary objects. Missed items will be found only when Federal agencies curate their collections to meet the requirements of 36 CFR 79 [Curation of Federally-Owned and Administered Archeological Collections]. Mr. Hicks stated that, if a Federal agency knows its inventory efforts has not identified all NAGPRA items in its collections, then it has not met the requirements of the law. However, once a Federal agency submits its summary and inventory to the National NAGPRA program, it has little incentive to provide information on missing items.

Mr. Bradley asked Mr. Robbins to provide a copy of the Smithsonian Institution letter to Mr. McManamon. Mr. Bradley asked about the Department of the Interior's position on the letter. Ms. Mattix explained that Mr. McManamon is aware of this issue. The Department of Justice has reprimanded the Smithsonian Institution on the letter and continues to be in discussions with the Smithsonian Institution about its actions. Mr. Bradley asked the other review committee members to remember the U.S. Army Corps of Engineers when considering the issue of Federal agency compliance. Mr. Bradley asked Mr. Hicks to submit a copy of his statement. Mr. Hicks agreed to send a copy as a letter to the review committee. Mr. Minthorn asked the National NAGPRA program to provide an update on the Kennewick case at the next review committee meeting.

**Mr. Audie Huber**, member of the Quinault Indian Nation and employee of the Confederated Tribes of the Umatilla Reservation, explained that he works in the Department of Natural Resources as an intergovernmental affairs manager and part-time cultural resources policy analyst. He explained that the standard of the determination of cultural affiliation adopted by the BLM for the Spirit Cave human remains, specifically the BLM's claims of lack of evidence, is disconcerting to cultural resources managers trying to establish cultural affiliation. He said this was

especially disconcerting given the wealth of information available. He characterized the BLM's definition of cultural affiliation as one that assumes that cultures are static, and said that it presents a number of problems to Indian tribes because cultures and biological characteristics can change over time. Another problem, according to Mr. Huber, is when the absence of a direct showing of cultural continuity is used as evidence that there is no cultural continuity. NAGPRA was intended to work the other way: absent a showing of clear discontinuity, continuity should be assumed when other evidence is present, including oral history, geography, folklore, linguistics. He said that the BLM's contention that the Spirit Cave human remains have scientific significance is inappropriate. He said that it creates a serious concern to the Indian tribes that agencies may consider cultural affiliation in the wrong light, preventing a cultural affiliation determination.

Mr. Huber explained that the policy of the Umatilla Tribe is not to disturb burials and, in the event that burials have been disturbed, to return those human remains to their original site. He said that the BLM's policy prohibiting reburial on Federal land is contrary to NAGPRA, ARPA, the National Historic Preservation Act (NHPA), and common-law property law. The BLM has taken the position that human remains and cultural items are not trust assets, but if the U.S. holds them, NAGPRA establishes that they are being held in trust for Indian tribes. According to Mr. Huber, this is consistent with the Department of Justice position taken in the Kennewick human remains litigation. He said that the BLM gave two reasons for not allowing reburial on Federal lands. First, public lands are subject to Federal control and multiple-use mandates. Second, repatriated or transferred materials are nonfederal, nonarcheological materials, and as such they are difficult to protect under Federal laws. Mr. Huber said that both reasons are erroneous, because if you repatriate and rebury Native American human remains, they retain their protective status under NAGPRA, ARPA, and NHPA. Mr. Huber expressed his appreciation to the review committee for its consideration of the issue of the Spirit Cave human remains and making a determination.

**Ms. Kelly Jackson**, Lac du Flambeau Tribal Historic Preservation Office in northern Wisconsin, assured the review committee that the repatriation efforts of the Fallon Paiute-Shoshone Tribe for the Spirit Cave human remains are very well known and supported throughout Indian Country. She expressed support for the review committee and its role in the dispute.

**Mr. Willard Jackson**, AK, said that the issue of reburial is difficult to discuss but at the same time is very good because the human remains need to go back to their proper people to do the proper closure. Closure is very important to the first nation people of the world.

**Ms. Jean McCoard**, Native American Alliance of Ohio, stated that she has addressed the review committee many times on the issued nonfederally recognized tribes in Ohio. She stated that inadvertent discoveries on State land often result in the return and reburial of the human remains in secret places. She expressed her concern that these secret places could be found. She said that this emphasized the need for protected, permanent locations, such as the Native American Memorial Park at the Fernald nuclear weapons facility, described to the review committee at previous meetings. Ms. McCoard explained that no consultation has occurred regarding the culturally unidentifiable human remains and associated funerary objects at the University of Toledo, because according to the university there is no one with whom to consult.

**Ms. Carol Mandrick** (phonetic), Department of Anthropology, Harvard University, asked whether the hesitation expressed over the wording in the findings was due to the possible precedent setting nature of these cases.

**Mr. Alvin Moyle**, Fallon Paiute-Shoshone Tribe, expressed appreciation on behalf of the Fallon Paiute-Shoshone Tribe for the review committee's work and consideration on the issue of the Spirit Cave human remains over the past five years. He stated that the Fallon Paiute-Shoshone Tribe would continue with this issue as long as necessary to have the Spirit Cave human remains returned.

**Mr. John Peters, Jr.**, executive director for Massachusetts Commission on Indian Affairs and repatriation officer for the Mashpee Tribe with the Wampanoag Confederation, expressed support for the repatriation efforts of the Abenaki Nation for the five human remains from Franklin Pierce College.

**Ms. Donna Roberts-Moody**, repatriation coordinator for the Abenaki Nation, explained that she supports an amendment to NAGPRA to include nonfederally recognized Indian groups and to include a representative from a nonfederally recognized Indian group on the review committee. The Abenaki Nation has been waiting seven years to

be considered for Federal recognition. She explained the difficulty of repatriation work, especially for nonfederally recognized groups, and urged the National NAGPRA program to try to help.

**Ms. Melinda Young**, Lac de Flambeau Band of Lake Superior Chippewa Indians, explained that it was an honor to attend the review committee meeting, which was her first. The tribe had received a NAGPRA documentation award in July 2000 and have created a forum of traditional advisors with 10 Ojibwa bands in upper Michigan and northern Wisconsin, with the ultimate goal of repatriation.

## Closing Comments

Ms. Metcalf welcomed Mr. Stearns and the new staff to the National NAGPRA program and thanked Mr. Robbins for his work. Ms. Worl thanked everyone for being at the meeting. Mr. Hart thanked the Peabody Museum of Archaeology and Ethnology for hosting the meeting. Mr. Minthorn thanked the review committee and the National NAGPRA staff for their efforts and the public for its participation. He thanked Mr. Robbins for his work and appreciation for what each has learned from the other. He thanked Mr. Stearns and expressed hope that he will provide continuity in the program. Mr. Robbins thanked the Peabody Museum of Archaeology and Ethnology and Harvard Law School for hosting the meeting.

The meeting was adjourned at 12:15 p.m. on Monday, November 19, 2001.

Certified: Mr. John Robbins, Date: March 13, 2002  
Assistant Director, Cultural Resources Stewardship and Partnerships  
Designated Federal Official, Native American Graves Protection and Repatriation Review Committee

Approved: Mr. Armand Minthorn                      Date: March 18, 2002  
Chair, Native American Graves Protection and Repatriation Review Committee